

Highly Confidential - Subject to Further Confidentiality Review

1 UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF OHIO
 3 EASTERN DIVISION
 4 *****
 5 IN RE: NATIONAL
 6 PRESCRIPTION OPIATE MDL No. 2804
 7 LITIGATION
 8 Case No.
 9 This document relates to: 17-MD-2804
 10
 11 The County of Summit,
 12 Ohio, et al. v. Purdue Hon. Dan A. Polster
 13 Pharma L.P., et al.
 14 Case No. 17-OP-45004
 15
 16 The County of Cuyahoga v.
 17 Purdue Pharma L.P., et al.
 18 Case No. 18-OP-45090
 19 *****
 20
 21 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
 22 CONFIDENTIALITY REVIEW
 23 VIDEOTAPED DEPOSITION OF THOMAS G. MCGUIRE, Ph.D.
 24 Tuesday, April 23rd, 2019
 9:02 a.m.
 Held At:
 Robins Kaplan LLP
 800 Boylston Street
 Boston, Massachusetts
 REPORTED BY:
 Maureen O'Connor Pollard, RMR, CLR, CSR

Golkow Litigation Services

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1 APPEARANCES:
 2
 3 FOR THE PLAINTIFFS:
 4
 5 MICHAEL J. PENDELL, ESQ.
 6 MOTLEY RICE LLC
 7 One Corporate Center
 8 20 Church Street
 9 Hartford, Connecticut 06103
 10 860-218-2722
 11 mpendell@motleyrice.com
 12
 13 -and-
 14
 15 DAVID J. KO, ESQ.
 16 KELLER ROHRBACK, LLP
 17 1201 Third Avenue, Suite 3200
 18 Seattle, Washington 98101
 19 206-623-1900
 20 dko@kellerrohrback.com
 21
 22 -and-
 23
 24 THOMAS M. SOBOL, ESQ.
 HAGENS BERMAN SOBOL SHAPIRO LLP
 55 Cambridge Parkway, Suite 301
 Cambridge, Massachusetts 02142
 617-482-3700
 tom@hbsslaw.com
 FOR CUYAHOGA COUNTY:
 JOSEPH L. CIACCIO, ESQ.
 NAPOLI SHKOLNIK PLLC
 400 Broadhollow Road, Suite 305
 Melville, New York 11747
 631-224-1133
 jciaccio@napolilaw.com

Golkow Litigation Services

Page 2

Highly Confidential - Subject to Further Confidentiality Review

1 APPEARANCES (Continued):
 2 FOR PURDUE PHARMA:
 3 JACQUELINE D. HARRINGTON, ESQ.
 4 DECHERT LLP
 5 1095 Avenue of the Americas
 6 New York, New York 10036
 7 212-698-3500
 8 jacqueline.harrington@dechert.com
 9
 10 FOR McKESSON CORPORATION:
 11
 12 JOHN W. ZIPP, ESQ. (Remotely)
 13 COVINGTON & BURLING LLP
 14 One CityCenter
 15 850 Tenth Street, NW
 16 Washington, DC 20001-4956
 17 202-662-5518
 18 jzipp@cov.com
 19
 20 -and-
 21
 22 DAVID HALLER, ESQ.
 23 COVINGTON & BURLING LLP
 24 620 Eighth Avenue
 New York, New York 10118
 212-841-1000
 dhaller@cov.com
 FOR CARDINAL HEALTH, INC.:
 J. ANDREW KEYES, ESQ.
 JOSEPH S. BUSHUR, ESQ.
 WILLIAMS & CONNOLLY LLP
 725 Twelfth Street, N.W.
 Washington, DC 20005
 202-434-5452
 akeyes@wc.com
 jrbushur@wc.com

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Page 3

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1 APPEARANCES (Continued):
 2
 3 FOR AMERISOURCEBERGEN DRUG CORPORATION:
 4
 5 BRIAN T. HIMMEL, ESQ.
 6 REED SMITH LLP
 7 225 Fifth Avenue
 8 Pittsburgh, Pennsylvania 15222
 9 412-288-4058
 10 bhimmel@reedsmith.com
 11
 12 FOR DISCOUNT DRUG MART, INC.:
 13 ERIC J. WEISS, ESQ. (Remotely)
 14 CAVITCH FAMULO & DURKIN, CO., LPA
 15 1300 E. 9th Street, 20th Floor
 16 Cleveland, Ohio 44144
 17 216-621-7860
 18 eweiss@cavitch.com
 19
 20 FOR WALGREENS:
 21 SHARON DESH, ESQ. (Remotely)
 22 BARTLIT BECK LLP
 23 54 West Hubbard Street
 24 Chicago, Illinois 60654
 312-494-4445
 Sharon.Desh@bartlitbeck.com
 FOR H.D. SMITH:
 WILLIAM J. LEEDER, III, ESQ.
 BARNES & THORNBURG LLP
 171 Monroe Avenue, NW
 Grand Rapids, Michigan 49503
 616-742-3979
 bill.leeder@btlaw.com

Golkow Litigation Services

Page 4

1 APPEARANCES (Continued):
2
3 FOR WALMART:
4 CLAUDE E. CASTLES, ESQ.
5 JONES DAY
6 555 South Flower Street, 15th Floor
7 Los Angeles, California 90071-2300
8 213-489-3939
9 ccastles@jonesday.com
10
11 FOR ALLERGEN:
12 MARTIN L. ROTH, ESQ.
13 KIRKLAND & ELLIS LLP
14 300 North LaSalle
15 Chicago, Illinois 60654
16 312-862-7170
17 martin.roth@kirkland.com
18
19 FOR JANSSEN and JOHNSON & JOHNSON:
20 JUSTIN E. RICE, ESQ.
21 TUCKER ELLIS LLP
22 950 Main Street, Suite 1100
23 Cleveland, Ohio 44113
24 216-696-3670
25 justin.rice@tuckerellis.com
26
27 FOR HBC SERVICES, INC.:
28 RICHARD I. HALPERN, ESQ.
29 MARCUS & SHAPIRA LLP
30 One Oxford Centre, 35th Floor
31 301 Grant Street
32 Pittsburgh, Pennsylvania 15219-6401
33 412-338-4690
34 halpern@marcus-shapira.com

1 APPEARANCES (Continued):
2
3 FOR ENDO PHARMACEUTICALS INC., ENDO HEALTH
4 SOLUTIONS INC., PAR PHARMACEUTICAL COMPANIES,
5 INC. (f/k/a PAR PHARMACEUTICAL HOLDINGS, INC.)
6 SAMUEL LONERGAN, ESQ.
7 REBECCA E. ZOLLER, ESQ.
8 ARNOLD & PORTER KAYE SCHOLER LLP
9 250 West 55th Street
10 New York, New York
11 212-836-7408
12 samuel.lonerган@arnoldporter.com
13 rebecca.zoller@arnoldporter.com
14
15 FOR RITE AID:
16 ELIZABETH I. BUECHNER, ESQ. (Remotely)
17 MORGAN, LEWIS & BOCKIUS LLP
18 101 Park Avenue
19 New York, New York 10178
20 212-309-6864
21 elizabeth.buechner@morganlewis.com
22 -and-
23 MARTHA LEIBELL, ESQ. (Remotely)
24 MORGAN, LEWIS & BOCKIUS LLP
25 200 S. Biscayne Boulevard, Suite 5300
26 Miami, Florida 33131-2339
27 305-415-3387
28 john.lavelle@morganlewis.com
29 martha.leibell@morganlewis.com

1 APPEARANCES (Continued):
2
3 FOR HENRY SCHEIN, INC., and HENRY SCHEIN MEDICAL
4 SYSTEMS, INC.:
5 MADELINE E. BRUNNER, ESQ. (Remotely)
6 LOCKE LORD LLP
7 2200 Ross Avenue, Suite 2800
8 Dallas, Texas 75201
9 214-740-8445
10 madeline.brunner@lockelord.com
11
12 FOR MALLINCKRODT, LLC:
13 CHRISTINE D'AURIA, ESQ.
14 ROPES & GRAY LLP
15 800 Boylston Street
16 Boston, Massachusetts 02199-3600
17 617-951-7000
18 christine.dauria@ropesgray.com
19
20 ALSO PRESENT REMOTELY:
21 JONATHAN JAFFE
22 ERICA BENTON
23
24 VIDEOGRAPHER: Robert Martignetti

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1 PROCEEDINGS

2

3 THE VIDEOGRAPHER: We are now on the

4 record. My name is Robert Martignetti, I'm a

5 videographer for Golkow Litigation Services.

6 Today's date is April 23rd, 2019, and the time

7 is 9:02 a.m.

8 This video deposition is taking place

9 in Boston, Massachusetts In Re: National

10 Prescription Opiate Litigation.

11 The deponent is Thomas McGuire.

12 Counsel will be noted on the

13 stenographic record.

14 The court reporter is Maureen Pollard,

15 and will now swear in the witness.

16

17 THOMAS G. MCGUIRE, Ph.D.,

18 having been duly identified and sworn, was

19 examined and testified as follows:

20 EXAMINATION

21 BY MR. KEYES:

22 Q. Good morning, Professor McGuire.

23 Would you state your full name for the record?

24 A. Thomas Gregory McGuire.

1 Q. My name is Andrew Keyes, and I'm one

2 of the lawyers on the defense side of this case.

3 I'm with the law firm of Williams & Connolly,

4 and we represent Cardinal Health, one of the

5 defendants.

6 Showing you what has been marked as

7 McGuire Exhibit Number 1.

8 (Whereupon, McGuire Exhibit Number 1

9 was marked for identification.)

10 BY MR. KEYES:

11 Q. Would you take a look at this exhibit

12 and confirm that this is your report plus the

13 various appendices that you prepared?

14 A. Yes, it looks right.

15 Q. Would you turn to Page 47 of

16 Exhibit 1? Are you there?

17 A. I am, yes.

18 Q. There's a signature there. Is that

19 your signature?

20 A. Yes, it is.

21 Q. Did you sign it?

22 A. Yeah.

23 Q. On March 25, 2019?

24 A. I did.

1 Q. And this Exhibit 1 is titled Expert

2 Report of Professor Thomas McGuire, Damages to

3 Bellwethers, dated March 25, 2019.

4 When you refer to bellwethers, are you

5 referring to Summit County and Cuyahoga County?

6 A. Yes.

7 Q. And does this report set forth your

8 opinions in this case?

9 A. Yes, it does, noting that I have

10 another report in the case.

11 Q. Okay. You have a second report

12 regarding nuisance?

13 A. Yes.

14 Q. And I'll show that to you in a moment.

15 A. Okay.

16 Q. But regarding damages to Summit County

17 and Cuyahoga County, this is your report?

18 A. Yes, it is.

19 Q. And does it reflect your calculations?

20 A. Well, it reflects my calculations

21 building on others' calculations.

22 Q. Including Mr. Cutler?

23 A. Including Professor Cutler and

24 Professor Rosenthal.

1 Q. And does this set forth your work?

2 A. Yes.

3 Q. Okay. Now, did you have anyone

4 assisting you in this engagement on behalf of

5 Summit County and Cuyahoga County?

6 A. Yes, I did.

7 Q. How many people assisted you?

8 A. This was -- would have been staff at

9 Compass Lexecon. I would say I know of four or

10 five by name. And my impression was that there

11 was some more junior people doing some of the

12 kind of data entry work.

13 Q. Who are the four or five people at

14 Compass Lexecon you know by name that assisted

15 you in this engagement?

16 A. Hal Sider.

17 Q. Can you spell the name?

18 A. Last name is S-I-D-E-R. Erica Benton,

19 B-E-N-T-O-N. Alice Kaminski, K-A-M-I-N-S-K-I.

20 And there's a statistician guy who I'll remember

21 before we close today, but there's another guy I

22 worked with by name.

23 Q. Are those the names of the people at

24 Compass Lexecon that you can remember right now?

1 A. Yes.

2 Q. Hal Sider, Erica Benton, and Alice

3 Kaminski?

4 A. Yes.

5 Q. And then a statistician whose name you

6 think you'll remember later today?

7 A. Yes.

8 Q. Anyone else?

9 A. There might be. I'll -- if I remember

10 someone, I'll let you know.

11 Q. What was Hal Sider's role in this

12 engagement?

13 A. He was a kind of project manager, I

14 would say.

15 Q. What do you mean by "project manager"?

16 A. The most senior person at Compass Lex.

17 Q. And what work did he perform on this

18 engagement?

19 A. You mean in my report, or overall in

20 the --

21 Q. In your report.

22 A. In my report. He would have been one

23 of the people advising me about the -- kind of

24 the form of presentation of some of the numbers,

1 and we went over the detailed budgets together,

2 so he would have had input into some of that.

3 Q. What kind of input?

4 MR. SOBOL: Just the subject, not the

5 content.

6 A. Inputs regarding the treatment of

7 different kind of costs that were listed in the

8 budgets.

9 BY MR. KEYES:

10 Q. Anything else you can tell me about

11 the work that Mr. Sider performed in connection

12 with this engagement?

13 A. That was the primary thing. He was

14 aware of what was going on, so...

15 Q. What do you mean?

16 A. I mean, he was aware of drafts of

17 report. He was aware of the stages of work.

18 Q. What was Erica Benton's role in this

19 engagement?

20 A. She was -- is also a senior person. I

21 met -- I haven't met her. I've just spoken with

22 her on the phone. She oversaw much of the data

23 collection from the bellwethers.

24 Q. And when you refer to bellwethers,

1 you're referring to Summit County and Cuyahoga

2 County?

3 A. Yes.

4 Q. And only those two counties?

5 A. Yes.

6 Q. And what do you mean she oversaw the

7 data collection?

8 A. She was a good person to ask questions

9 of with respect to various components of the

10 cost report, and I -- my impression was she was

11 kind of on top of things and was working with

12 other people and would help them in their data

13 work.

14 Q. What work did she perform on this

15 engagement?

16 MR. SOBOL: Just the types, not the

17 content.

18 A. I think supervising some Compass Lex

19 staff, and also she would have participated in

20 some of the decisions about different forms of

21 costs in the budget.

22 BY MR. KEYES:

23 Q. What do you mean she participated in

24 decisions?

1 A. A component of my work was to identify

2 from budgets -- from the public budgets of the

3 bellwether counties the components of the costs

4 that might be affected by harms that were due to

5 misconduct of the defendants, and not all of the

6 costs, not all of the budget items would be

7 subject to that, so there was a kind of

8 selection of the budget items that were

9 economically justified and included in that

10 analysis.

11 Q. Well, you said she participated in

12 decisions regarding the different forms of costs

13 in the budget. Who made the decisions?

14 A. I made all the decisions.

15 Q. So what was her role when you said she

16 participated in the decisions?

17 A. Well, she would have been involved in

18 the conversations. When we talked about these

19 things, she would have helped explain what

20 non-compensation costs are there for this

21 particular division. So there was a lot of kind

22 of interpretation of the details of the budget

23 documents that she helped with.

24 Q. You mentioned Alice Kaminski.

1 A. Yes.

2 Q. What was her role in this engagement?

3 A. Less senior to Erica. I hope I'm not

4 getting the hierarchy wrong at Compass Lex. She

5 worked on some of the budget items. I think she

6 may not have been involved in all of them, but

7 in a component, some components of it.

8 Q. Anything else you can say about her

9 role in this engagement?

10 A. No.

11 Q. What work did she perform on this

12 engagement then?

13 A. She would have supervised some of the

14 data entry that appears in the Excel

15 spreadsheets in my report.

16 Q. Anything else?

17 A. Not that I can think of.

18 Q. And what was the role of the

19 statistician you referenced?

20 MR. SOBOL: Was it Evan?

21 A. Evan.

22 BY MR. KEYES:

23 Q. What's Evan's last name?

24 A. I can't remember, I'm sorry.

1 Q. Okay.

2 MR. SOBOL: McKay?

3 A. Evan McKay, yes.

4 MR. KEYES: I appreciate the

5 assistance, but for now I'd just like to know

6 what Professor McGuire knows without assistance.

7 BY MR. KEYES:

8 Q. What is Evan's last name, as you

9 remember it?

10 A. Evan McKay.

11 Q. What was Evan McKay's role in --

12 A. I call him a statistician because he

13 seemed to be aware of and interested in some of

14 the conduct of the data analysis, and he was

15 also helpful to me on the budget side.

16 Q. What work did Mr. McKay perform in

17 this engagement?

18 A. He helped explain to me some of the

19 analysis being done by Professor Cutler.

20 Q. Did he help explain to you some of the

21 analysis done by Professor Rosenthal?

22 A. No, he didn't.

23 Q. What about the work done by

24 Professor Gruber?

1 A. I'm sorry, what about it?

2 Q. Did Mr. McKay help explain to you some

3 of the analysis done by Professor Gruber?

4 A. No, he didn't.

5 Q. Okay. Did Mr. McKay explain to you

6 some of the analysis by anyone else in this case

7 beside Professor Cutler?

8 A. No, he didn't.

9 I have more of another category of

10 assistants once you're done with Compass Lex.

11 Q. Okay. Did you speak with

12 Professor Cutler about the work he did in this

13 case?

14 A. Yes.

15 Q. Did you speak with Professor

16 Rosenthal?

17 A. I did, yes.

18 Q. Did you speak with Professor Gruber?

19 A. Yes.

20 Q. And when you said a moment ago that

21 Mr. McKay helped explain some of the analysis by

22 Professor Cutler, are you referring to the

23 statistical analysis that Professor Cutler did?

24 A. Yes, the regressions.

1 Q. Why did you need Mr. McKay's

2 assistance in understanding the statistical

3 analysis done by Professor Cutler?

4 MR. SOBOL: Objection.

5 A. Well, I wanted to be sure I understood

6 it.

7 BY MR. KEYES:

8 Q. And you found Mr. McKay helpful to

9 your understanding of what statistical analysis

10 and regressions Professor Cutler had performed?

11 A. Yes.

12 Q. What else did Mr. McKay do? You said

13 he seemed to be aware of and had an interest in

14 the conduct of the data analysis. You said he

15 helped explain to you some of the statistical

16 analysis performed by Professor Cutler. What

17 else, if anything, did Mr. McKay do?

18 A. That was his primary role.

19 Q. And have you met with Mr. Sider?

20 A. Yes.

21 Q. How many times?

22 A. Six, seven.

23 Q. Have you met with Ms. Benton?

24 A. No, not in person.

1 Q. Have you talked with Ms. Benton over
2 the phone?
3 A. Yes.
4 Q. How many times?
5 A. Ten. These are estimates.
6 Q. Have you met with Ms. Kaminski?
7 A. Yes.
8 Q. How many times?
9 A. One time.
10 Q. And have you met with Mr. McKay?
11 A. Never, no, only spoken on the phone.
12 Q. How many times?
13 A. Eight times.
14 Q. How many?
15 A. Eight. These are estimates.
16 Q. Can you tell me anything more about
17 the work that Mr. Sider, Ms. Benton,
18 Ms. Kaminski, or Mr. McKay did to assist you in
19 this engagement?
20 MR. SOBOL: Objection.
21 A. They would answer questions for me if
22 I had something more I wanted to know about
23 something.
24 BY MR. KEYES:

1 Q. Anything else?
2 A. No, not that I can think of.
3 Q. Okay. Did you receive assistance from
4 anyone who was not employed by Compass Lexecon?
5 MR. SOBOL: Objection to form.
6 A. Yes. This was the other category of
7 assistance I wanted to be sure to mention.
8 BY MR. KEYES:
9 Q. What is this category?
10 A. This was the primary statistical
11 analyst who helped Meredith Rosenthal. His name
12 is Forrest. Last name is McCluer,
13 M-c-C-L-U-E-R. And similarly to Evan in helping
14 me understand what Dave Cutler did, Forrest was
15 helpful in explaining the analysis that Meredith
16 Rosenthal did.
17 Q. Forrest McCluer, did I get that name
18 right?
19 A. Yes.
20 Q. Did Mr. McCluer work for
21 Professor Rosenthal?
22 A. Meaning, I'm sorry, at her direction,
23 or for her in some employment relationship?
24 Q. You said there was a primary

1 statistical analyst. So was Mr. McCluer
2 assisting Professor Rosenthal?
3 A. He was assisting her in her work, yes.
4 Q. And so although you did not speak with
5 Professor Rosenthal about her work, you spoke
6 with Mr. McCluer about her work?
7 MR. SOBOL: Objection.
8 BY MR. KEYES:
9 Q. Is that correct?
10 A. No, that's not correct.
11 MR. SOBOL: Objection.
12 BY MR. KEYES:
13 Q. Okay.
14 A. I spoke with both of them about their
15 work.
16 Q. Okay.
17 A. I thought I said that.
18 Q. I may have misunderstood then.
19 And how many times did you speak with
20 Mr. McCluer?
21 MR. SOBOL: Objection to form.
22 A. Probably six to eight.
23 BY MR. KEYES:
24 Q. Do you have an expertise in

1 statistics?
2 A. I'm pretty good at statistics, yes.
3 Q. Do you claim to have an expertise?
4 A. I'm sorry, what was the question?
5 Q. Do you claim to have an expertise in
6 statistics?
7 A. Well --
8 MR. SOBOL: Object to the form.
9 A. -- I would say yes. And I'll briefly
10 explain, and, of course, you feel free to follow
11 up as you like.
12 Much of the work that I do is applied
13 health economics, and looking back at the work
14 that has had the most impact and received the
15 most recognition in terms of awards and prizes
16 has been applied econometrics. So while I
17 wouldn't be mistaken for an econometrician,
18 which is a statistician who works with
19 economics, I have expertise in it, and, in fact,
20 much of my academic research is oriented toward
21 statistical methods.
22 BY MR. KEYES:
23 Q. Have you performed a regression
24 analysis yourself?

1 A. Ever?

2 Q. Yes.

3 A. Many times.

4 Q. Did you perform any regression

5 analysis in this case, in this engagement?

6 A. No, I didn't.

7 Q. Do you consider yourself capable of

8 doing a regression analysis in this engagement?

9 MR. SOBOL: Objection.

10 A. Well, that would depend on the

11 assignment.

12 BY MR. KEYES:

13 Q. Well, could you have done the work

14 that Professor Rosenthal did?

15 A. Could I have done it? Not as well as

16 she could.

17 Q. Do you have the expertise to do the

18 work that Professor Rosenthal did?

19 A. I'd say I have some of the expertise.

20 Q. So you think you could have done the

21 regression analyses that Professor Rosenthal

22 performed?

23 MR. SOBOL: Objection to form.

24 A. Well, the work of specifying the

1 regressions is something that draws on

2 experience as well as technical expertise, and

3 Meredith trumps me on those. So I might have

4 been able to do it, but Meredith is in a better

5 position to do it.

6 BY MR. KEYES:

7 Q. Have you -- could you do the work that

8 Professor Cutler did in this case?

9 MR. SOBOL: Objection.

10 A. I think my answer would be the same.

11 BY MR. KEYES:

12 Q. Could you perform the regression

13 analyses that Professor Cutler conducted?

14 A. It's the same answer.

15 Professor Cutler is first rank in this kind of

16 work, and while I have some qualifications as a

17 statistician, I think he's better positioned to

18 do the work he did.

19 Q. So you've mentioned four or -- you've

20 mentioned four people by name at Compass Lexecon

21 who assisted you in this engagement.

22 A. Yes.

23 Q. You've mentioned the conversations you

24 had with Mr. McCluer.

1 A. Yes.

2 Q. Did anyone else assist you in this

3 engagement?

4 A. I don't think so.

5 You're talking about damages?

6 Q. I am talking about damages right now.

7 A. Okay.

8 Q. Anyone else?

9 A. I don't think so.

10 Q. There are references in your damages

11 report, which is Exhibit Number 1, to staff and

12 team. When you refer to staff in your report,

13 who are you referring to?

14 A. It would have been the staff at

15 Compass Lex primarily. I guess Forrest would

16 have been included in that.

17 Q. And when you refer to your team in

18 your damages report, which is Exhibit 1, who are

19 you referring to?

20 A. Do you mind if you point that to me so

21 I can see where the context is?

22 Q. Sure. Will you turn to Page 8 in your

23 report?

24 A. Okay.

1 Q. Okay. Paragraph 12.

2 A. Okay.

3 Q. It says, "In preparing this report, I,

4 and staff under my direction: analyzed data,

5 reviewed economic literature, court filings,

6 documents produced in this litigation, public

7 information and deposition testimony; and spoke

8 with representatives of the Bellwether

9 governments."

10 A. Okay.

11 Q. Do you see that language?

12 A. Yes.

13 Q. When you refer to "staff" in that

14 sentence, who are you referring to?

15 A. The people we just spoke about.

16 Q. Including Mr. McCluer?

17 A. Yes.

18 Q. And then if you turn to Page 28.

19 A. Okay.

20 Q. Are you there?

21 A. Yes.

22 Q. In Paragraph 51 you say, "To identify

23 affected divisions, I, and my team under my

24 direction, reviewed budget and expenditure

1 information from the Bellwether governments."
 2 Do you see that language?
 3 A. Yes, I do.
 4 Q. Who are you referring to there?
 5 A. That would be the same people.
 6 Q. Anyone else?
 7 A. No.
 8 Q. Later in the same paragraph a few
 9 lines down you say, "In addition, I and members
 10 of my team met with local officials to confirm
 11 my understanding of both the activities
 12 undertaken by these divisions and whether those
 13 activities had been affected by the opioid
 14 crisis."
 15 Do you see that language?
 16 A. I do, yes.
 17 Q. Who are you referring to in that
 18 sentence when you say "members of my team"?
 19 A. The same group of people.
 20 Q. Anyone else?
 21 A. No.
 22 Q. Now, you are charging \$900 per hour
 23 for your time on this engagement, correct?
 24 A. Yes, I am.

1 Q. How many hours have you spent as of
 2 today on this engagement?
 3 MR. SOBOL: Did you say damages only
 4 again?
 5 A. Oh, damages only?
 6 BY MR. KEYES:
 7 Q. Damages.
 8 A. Oh, gosh. I haven't divided my hours
 9 between damages and my other report.
 10 Q. Okay.
 11 A. Except it would be in the details of
 12 the listing of my hours. So I would -- I'll
 13 guess for you.
 14 MR. SOBOL: Do you want to do that?
 15 BY MR. KEYES:
 16 Q. What's your best estimate of the
 17 number of hours you have spent on the damages
 18 analysis?
 19 A. I would say 250.
 20 Q. And how much time have you spent on
 21 the nuisance report?
 22 A. About the same.
 23 Q. So is it your best estimate that
 24 you've spent approximately 500 hours on this

1 engagement?
 2 A. Yes.
 3 Q. How many hours has Mr. Sider spent on
 4 this engagement?
 5 A. I don't know.
 6 Q. How many hours has Ms. Benton spent on
 7 this engagement?
 8 A. I don't know.
 9 Q. How many hours has Ms. Kaminski spent
 10 on this engagement?
 11 A. I don't know.
 12 Q. How many hours has Mr. McKay spent on
 13 this engagement?
 14 A. I don't know.
 15 Q. How many hours has Mr. McCluer spent
 16 on this engagement?
 17 A. I don't know.
 18 Q. How much has Compass Lexecon billed
 19 the plaintiffs in this case for their work on
 20 this engagement?
 21 A. I don't know.
 22 MR. SOBOL: Objection to form. Sorry,
 23 I fell asleep there for a second. Objection to
 24 form.

1 BY MR. KEYES:
 2 Q. How much has Compass Lexecon incurred,
 3 even if not billed to plaintiffs, for their work
 4 on this engagement?
 5 A. I don't know.
 6 Q. Would you turn to Page 19 of your CV.
 7 A. My CV. Okay.
 8 Q. You attached your CV as Appendix IV.A.
 9 A. Yes, I have it.
 10 Q. And this lists your litigation
 11 experience 2014 through present? Yes?
 12 A. Yes.
 13 Q. And this continues from Pages 19 and
 14 20. Is this something you prepared?
 15 A. Yes.
 16 Q. Is it accurate?
 17 A. Well, there's a couple of additions.
 18 Q. Okay. What are the additions?
 19 A. The additions are reports I submitted
 20 since this was submitted. On March 25th I
 21 submitted a report in a reverse payment case,
 22 and then I think April 3rd I may -- or 1st I
 23 submitted also a reverse payment case report.
 24 Q. Any other reports or testimony you

1 would add to this list?

2 A. No.

3 Q. When you say "a reverse payment case,"

4 what do you mean?

5 A. I mean it's an antitrust case

6 involving the potential anti-competitive effects

7 of a patent settlement.

8 Q. And did you quantify damages in either

9 of those two cases you just mentioned where you

10 submitted reports on March 25th and April 3rd?

11 A. No, I didn't.

12 Q. And in the report that you submitted

13 on March 25th, who did you submit the report on

14 behalf of?

15 A. It was a -- class plaintiffs.

16 Q. How about in the report that you

17 submitted on April 3rd?

18 A. The same.

19 Q. If you go back to the first page,

20 Page 19, you list the In re: Nexium Antitrust

21 Litigation.

22 A. Yes.

23 Q. Was that a reverse payments case?

24 A. Yes, it was.

1 Q. And did you offer opinions in support

2 of the plaintiff?

3 A. Yes, I did.

4 Q. Did you calculate damages in that

5 case?

6 A. No, I didn't.

7 Q. And the next case you list, United

8 States of America, ex rel. Saldivar versus

9 Fresenius Medical Care Holdings.

10 Do you see that?

11 A. Yes.

12 Q. What type of case was that?

13 A. It was -- I'm probably pronouncing

14 this incorrectly, but a qui tam case.

15 Q. And for which party did you submit a

16 report and serve as an expert?

17 A. For the plaintiffs.

18 Q. Did you quantify damages in that case?

19 A. No, I didn't.

20 Q. What were your opinions in that case?

21 A. They had to do with fraudulent billing

22 and manipulation of tests.

23 Q. And the next case you list, Monica

24 Barba and Jonathan Reisman, on behalf of

1 themselves and all others similarly situated

2 versus Shire U.S., Inc.

3 Do you see that?

4 A. I do.

5 Q. What kind of case was that?

6 A. That was a reverse payment case.

7 Q. For which party did you issue these

8 reports and serve as an expert?

9 A. The plaintiffs.

10 Q. Did you quantify damages in that case?

11 A. No, I didn't.

12 Q. Turn to the next case, United States

13 of America, ex rel., Tracey George and Dawn

14 Simmons versus Fresenius Medical Care Holdings,

15 Inc.

16 Do you see that one?

17 A. Yes, I do.

18 Q. Was that also a reverse payment case?

19 A. No. That was another qui tam case.

20 Q. And for what party did you issue a

21 report and serve as a testifying expert?

22 A. The plaintiffs.

23 Q. Did you quantify damages in that case?

24 A. No, I didn't.

1 Q. What were your opinions about in that

2 case?

3 A. It was also about fraudulent billing

4 and test manipulation.

5 Q. And then the next case you list are In

6 Re: Cipro Cases I & II.

7 Do you see that?

8 A. I do.

9 Q. What kind of case was that?

10 A. That was a reverse payment case.

11 Q. For what party did you serve as an

12 expert, or provide a report?

13 A. The plaintiffs.

14 Q. Did you quantify damages in that case?

15 A. No, I did not.

16 Q. Turn to the next page of your CV, In

17 Re: Solodyn Antitrust Litigation.

18 Do you see that?

19 A. Yes, I do.

20 Q. What kind of case was that?

21 A. That was a reverse payment case.

22 Q. For what party did you serve as an

23 expert and submit these expert reports?

24 A. For the plaintiffs.

1 Q. Did you quantify damages?

2 A. No, I didn't.

3 Q. Next one is In Re: Asacol Antitrust

4 Litigation.

5 Do you see that?

6 A. I do.

7 Q. What kind of case was that?

8 A. That was also a reverse payment case.

9 Q. For what party did you serve as an

10 expert and submit these expert reports?

11 A. For the plaintiffs.

12 Q. Did you quantify damages?

13 A. No, I didn't.

14 Q. Next case is United States of America

15 ex rel. Stephen A. Krahling and Joan Wlochowski

16 versus Merck & Co., and In Re: Merck Mumps

17 Vaccine Antitrust Litigation.

18 Do you see that?

19 A. I do.

20 Q. Were those distinct cases? You list

21 them together.

22 A. I do. I submitted one report. I'm

23 not sure about the case question.

24 Q. Okay. Well, for the two cases listed

1 there, what kind of cases were they?

2 A. They were cases of monopolization, I

3 would say.

4 Q. So would you consider them to be

5 reverse payment cases?

6 A. No, they're not reverse payment cases.

7 Q. And what were your opinions in that

8 case?

9 A. It was monopolization.

10 Q. And for what party did you serve as an

11 expert and submit expert reports?

12 A. For the plaintiffs.

13 Q. Did you quantify damages in that case?

14 A. I quantified overpayments in that

15 case, yes. Excuse me. It may have been also a

16 qui tam case.

17 Q. You say this may have been one?

18 A. This may have been one. I'm not

19 100 percent sure.

20 Q. So in this case you quantified

21 overpayments?

22 A. Yes.

23 Q. Overpayments by whom?

24 A. Public and private payers.

1 Q. To whom?

2 A. To the company involved.

3 Q. What was the company involved?

4 A. It was Merck.

5 Q. And did you call those overpayments

6 damages in that case?

7 A. I don't remember.

8 Q. Did you consider those overpayments to

9 be damages in that case?

10 MR. SOBOL: Objection.

11 A. I'm not sure how to answer. I just

12 considered them overpayments.

13 BY MR. KEYES:

14 Q. In Re: Niaspan Antitrust Litigation,

15 what kind of case was that?

16 A. That was a reverse payment case.

17 Q. For what party did you serve as an

18 expert and submit expert reports?

19 A. For the plaintiff.

20 Q. Did you quantify damages in that case?

21 A. No, I didn't.

22 Q. And then the last one you list here is

23 In Re: Loestrin 24 FE Antitrust Litigation.

24 Do you see that?

1 A. Yes.

2 Q. What kind of case was that?

3 A. That was a reverse payment case.

4 Q. For what party did you serve as an

5 expert and submit the expert report?

6 A. Also for the plaintiff.

7 Q. Did you quantify damages?

8 A. No, I didn't.

9 Q. We've reviewed the cases that are

10 listed on Pages 19 and 20 of your CV, plus the

11 two cases that you said earlier you had

12 submitted reports in after the date of this CV.

13 Are there any other cases where you have served

14 as an expert and you have quantified damages?

15 A. Yes, with the explanation that a

16 report was never submitted, but I was charged

17 with quantifying damages.

18 Q. What case was that?

19 A. I don't remember the name of the drug

20 involved. It was a damages phase of a case in

21 which a generic firm had been determined to

22 enter and sell and profit illegally. And then

23 the issue in the case at the time I became

24 involved was what the damages should be.

1 Q. You did not submit an expert report in
2 that case?

3 A. I did not.

4 Q. Did you testify at all in deposition
5 or hearing or trial?

6 A. No, I don't think so.

7 Q. And for what party in that case did
8 you serve as an expert?

9 THE WITNESS: Is it -- I can answer
10 this freely?

11 MR. SOBOL: Well...

12 THE WITNESS: I don't mind, whatever
13 is --

14 MR. SOBOL: Was the engagement
15 confidential?

16 THE WITNESS: I believe it was
17 confidential.

18 MR. SOBOL: So why don't you testify,
19 if it's acceptable, what side of the V you were
20 on, whether the claimant or the defendant, and
21 leave it at that, if you know.

22 A. Would you mind asking the question
23 that I should answer?

24 BY MR. KEYES:

1 Q. Well, I'd like to know the name of the
2 party for which you served as an expert in this
3 case where you claim to have quantified damages
4 but you did not submit an expert report and you
5 did not give any testimony. I'd like to know
6 the name. If you don't want to give the name,
7 I'd like to know whether it was the claimant or
8 the defendant.

9 A. It was the defendant. I'm happy to
10 take instruction if I give you the name. It's
11 not -- I'm not hiding anything. I just want
12 to --

13 MR. SOBOL: The party is not here.
14 BY MR. KEYES:

15 Q. I can't give you instructions. I can
16 only ask questions.

17 A. I'm appealing to whoever can give me
18 instructions.

19 MR. SOBOL: Well, I'm here, and I'm
20 giving you instructions. If you have good
21 reason to believe that the engagement was
22 supposed to be confidential without speaking to
23 the party, don't divulge it. The attorneys will
24 deal with it off-line. You've identified it was

1 the defendant, and that should be acceptable for
2 now.

3 THE WITNESS: All right.

4 BY MR. KEYES:

5 Q. Did you testify in a case called Blue
6 Cross and Blue Shield United of Wisconsin versus
7 Marshfield Clinic?

8 A. I submitted a report and was deposed
9 in that case.

10 Q. Did you testify at trial in that case?

11 A. No.

12 Q. What kind of case was that?

13 A. That was also -- that was a damages
14 case. I was involved with damages. The case
15 itself was monopolization.

16 Q. So you prepared a report on damages?

17 A. Yes.

18 Q. Quantifying damages?

19 A. Yes.

20 Q. For which party?

21 A. For the plaintiff, which was Blue
22 Cross/Blue Shield of Wisconsin, I guess.

23 Q. Did that case settle?

24 A. I don't remember.

1 Q. Why didn't you give trial testimony in
2 the case?

3 MR. SOBOL: Objection to the form.

4 A. My understanding was I came in on
5 appeal stage. And I'm not sure why I wasn't
6 asked to testify.

7 BY MR. KEYES:

8 Q. Did you offer expert opinions in a
9 case called Agostino versus Quest Diagnostics,
10 Inc.?

11 A. Yes, I did.

12 Q. Did you submit a report?

13 A. Yes.

14 Q. Were you deposed?

15 A. I don't remember.

16 Q. Did you give testimony at trial?

17 A. No.

18 Q. What kind of case was that?

19 A. That was a fraudulent billing case.

20 Q. Did you quantify damages?

21 A. I don't remember.

22 Q. What were your opinions in that case?

23 A. It was fraudulent billings.

24 Q. That's it?

1 A. Well, there was a lot of backup to
2 that.

3 Q. Well, I'm asking for your best
4 recollection. In that case, did you offer
5 opinions quantifying damages?

6 A. I don't remember.

7 Q. And for what party did you serve as an
8 expert and submit that report?

9 A. For a class, plaintiff, for
10 plaintiffs.

11 Q. Did you serve as an expert in the case
12 titled In Re: Actiq Sales and Marketing
13 Practices Litigation?

14 A. Yes, I did.

15 Q. Did you submit a report?

16 A. Yes.

17 Q. Were you deposed in that case?

18 A. I don't remember.

19 Q. Did you testify at any trial?

20 A. No.

21 Q. What kind of case was that?

22 A. That, I'm not sure of the legal
23 classification. My work had to do with improper
24 marketing.

1 Q. Did you quantify damages?

2 A. No.

3 Q. For what party did you serve as an
4 expert?

5 A. For the plaintiffs.

6 Q. Did you serve as an expert in a case
7 titled United States ex rel. Tracey in the
8 Northern District of Alabama?

9 A. Can you remind me what -- I need more
10 information on it than that.

11 Q. Do you remember a case in the Northern
12 District of Alabama?

13 A. You'll have to remind me.

14 Q. Okay. Do you remember a case
15 involving the United States ex rel. Tracey?

16 A. I don't remember. Sorry.

17 Q. No recollection of that?

18 A. No recollection.

19 Q. Okay. Besides the cases we've talked
20 about, can you think of any other time when you
21 have served as a testifying expert where you are
22 attempting to quantify damages?

23 A. I can't think of any.

24 Q. Have you ever served as a testifying

1 expert where you have quantified damages
2 suffered by a municipality, other than this
3 case?

4 A. No, I haven't.

5 Q. Have you ever served as a testifying
6 expert where you quantified damages suffered by
7 a government other than this case?

8 A. I think I would say no.

9 Q. So have you ever served as a
10 testifying expert where you've quantified the
11 damages allegedly suffered by a municipality or
12 a government as being the expenditures for
13 providing services to their constituents?

14 MR. SOBOL: Objection.

15 A. Is this different than the previous
16 question?

17 BY MR. KEYES:

18 Q. I think it's a subset of the prior
19 question.

20 A. To which I said no to.

21 Q. Okay. So what's your answer to this
22 question?

23 MR. SOBOL: Objection.

24 A. So it has to be no, unless I'm

1 misunderstanding what you're asking.

2 BY MR. KEYES:

3 Q. Have you ever served as a testifying
4 expert where you've quantified the damages
5 allegedly suffered by a municipality or a
6 government as being the expenditures for the
7 municipality or government providing services to
8 their constituents?

9 MR. SOBOL: Objection.

10 A. I believe I answered the more general
11 question prior to that. If there's a
12 distinction, I'm missing it.

13 BY MR. KEYES:

14 Q. It's very simple. It's a yes-or-no
15 question. If it's no, you can say no.

16 MR. SOBOL: Or if he doesn't
17 understand it, he can say he doesn't understand
18 it, which he just did.

19 BY MR. KEYES:

20 Q. Have you ever served as a testifying
21 expert where you have quantified the damages
22 allegedly suffered by the municipality or the
23 government as being the expenditures the
24 municipality or government incurred in providing

1 services to their constituents?

2 MR. SOBOL: Objection.

3 A. Okay. I'm not sure what the objective

4 is of asking a general question and then a

5 subquestion that I think is covered by the

6 general question to which I answered no. And if

7 there's a distinction, I'm missing it.

8 BY MR. KEYES:

9 Q. So is your answer to my question no?

10 MR. SOBOL: Objection.

11 A. It's the answer I just gave ten

12 seconds ago.

13 BY MR. KEYES:

14 Q. No, you haven't answered it, sir. I

15 asked a broad question, and you gave me a

16 straight answer. You said no. Now I'm asking a

17 more specific question. And I'm entitled to ask

18 the questions I want. You may not think it

19 makes any sense --

20 A. I'm not --

21 Q. -- but I'm entitled to ask the

22 questions I want.

23 MR. SOBOL: No question before you.

24 BY MR. KEYES:

1 Q. So I'm asking you to answer my

2 question, whether you think it's useful or not.

3 Okay?

4 MR. SOBOL: Objection. There's no

5 question before you.

6 BY MR. KEYES:

7 Q. Okay. Have you ever served as a

8 testifying expert where you purported to

9 quantify the damages suffered by a municipality

10 or government as being the expenditures incurred

11 by the municipality or the government in

12 providing services to its constituents?

13 MR. SOBOL: Objection to form.

14 A. We seem to be stuck. I have answered

15 what I regarded to be a question that covers

16 this, and I'm puzzled why that answer doesn't --

17 isn't sufficient, and my puzzlement leads me to

18 wonder if there's something I'm missing.

19 BY MR. KEYES:

20 Q. So you're refusing to answer the

21 question?

22 MR. SOBOL: No, he's not. He's given

23 the answer several times now.

24 BY MR. KEYES:

1 Q. Have you ever served as a testifying

2 expert where you offered the opinion that an

3 expenditure has an opportunity cost and that

4 opportunity cost is "damages"?

5 MR. SOBOL: Objection.

6 A. I'm sorry, I missed the first part.

7 This is research, or this is testifying expert

8 you're asking about?

9 BY MR. KEYES:

10 Q. Testifying expert.

11 Have you ever served as a testifying

12 expert where you offered an opinion that an

13 expenditure has an opportunity cost, and that

14 opportunity cost is "damage"?

15 A. So this would -- there's no government

16 qualifier there. It's any expenditure?

17 Q. Correct.

18 A. So this needn't be a government

19 related case, am I -- just so I'm following?

20 Q. I asked ever.

21 A. Okay.

22 Q. So have you ever served as a

23 testifying expert where you have offered the

24 opinion that the expenditure has an opportunity

1 cost, and that opportunity cost is "damages"?

2 A. I would say that's the general

3 economic approach to a question like this, that

4 spending is the right metric for damages because

5 of opportunity cost considerations, and then

6 yes, it's damages.

7 Q. So please name for me the specific

8 cases where you have offered the opinion that an

9 expenditure has an opportunity cost, and that

10 opportunity cost is "damages."

11 A. All the cases in which I've responded

12 to your questions that I do damages, that's what

13 damages are regarded in economics.

14 Q. And did any of those cases involve

15 quantifying damages allegedly suffered by a

16 municipality or a government?

17 A. No, they did not.

18 Q. Has a court ever excluded you from

19 testifying as an expert?

20 A. There was in Nexium some of the work

21 that I did that was not heard by the jury. I'm

22 not sure if that's what you're asking about.

23 Q. And it was not heard by the jury

24 because of a decision by the judge?

1 A. By Judge Young, yes.

2 Q. What was the basis for the judge's

3 decision to not let the jury hear your opinion?

4 A. My understanding was that -- I did a

5 series of reports in that case, and with respect

6 to one of the later reports I conducted some

7 analysis that Judge Young thought, given the way

8 the case was shaping up, in his view, that it

9 wouldn't be helpful, is my understanding.

10 Q. So what were the opinions that you

11 were offering that the judge decided the jury

12 could not hear?

13 A. The opinion was an analysis of stock

14 price movement around the announcement of the

15 settlement between the brand and the generic in

16 that case.

17 Q. What did the judge say in explaining

18 why he thought that opinion would not be helpful

19 to the jury?

20 A. I don't remember how he put it.

21 Q. Has a testifying -- has a court ever

22 barred you from offering opinions on damages?

23 A. Not so far as I know.

24 Q. Has a court ever criticized your

1 approach or your methodology for quantifying

2 damages?

3 A. In the Marshfield case that you

4 mentioned a bit ago, Judge Posner and I didn't

5 see eye to eye on the kind of statistical

6 comparisons that should be done.

7 Q. What was Judge Posner's criticism of

8 your approach?

9 MR. SOBOL: Objection to the form.

10 A. The -- I was ahead of my time a bit on

11 that case. The analysis that I did to quantify

12 damages is what goes now by the name of

13 difference in difference, which is an

14 econometric method where you identify a kind of

15 control group, and you follow that control group

16 forward, you follow your group forward,

17 something happens to the group you're interested

18 in, and you use the control group as a way to

19 adjust for other factors.

20 I don't think I -- I have all the

21 respect in the world for Judge Posner, but I

22 don't think he had seen much of this at that

23 point, which was a number of years ago. It's

24 now very common methodology. But my

1 understanding of his objection was that I didn't

2 have explicit variables in the model to account

3 for things that would have been adjusted for,

4 controlled for in the difference in difference

5 analysis.

6 BY MR. KEYES:

7 Q. Have there been other instances where

8 a court has criticized your approach or

9 methodology for quantifying damages?

10 MR. SOBOL: Objection to the form.

11 A. None that I can think of.

12 BY MR. KEYES:

13 Q. Has a court ever barred you from

14 offering opinions on other topics besides

15 damages?

16 MR. SOBOL: Objection.

17 A. Not that I know of.

18 BY MR. KEYES:

19 Q. Has a court ever criticized the

20 opinions you were seeking to offer on other

21 topics besides damages?

22 A. I don't know.

23 Q. You can't think of an instance?

24 A. I can't think of any.

1 Q. Has a court ever excluded your

2 opinions on the ground that you failed to

3 consider competing explanations for your

4 findings?

5 MR. SOBOL: Objection. Form.

6 A. Not so far as I know.

7 BY MR. KEYES:

8 Q. So have you given me every instance

9 where a court has either excluded you from

10 testifying as an expert, or has barred the

11 opinions you've sought to offer, or have

12 criticized your approach or methodology?

13 MR. SOBOL: Objection to the form.

14 A. I'm giving you my best recollection,

15 yes.

16 BY MR. KEYES:

17 Q. Are you a doctor?

18 A. I'm not a medical doctor. I'm an

19 economist.

20 Q. Have you ever written a prescription

21 for drugs?

22 A. No, I never have.

23 Q. Are you a pharmacist?

24 A. I am not a pharmacist.

1 Q. Have you ever filled a prescription
2 for drugs?

3 A. Not from the pharmacy side, no.

4 Q. Are you a pharmacologist?

5 A. No, I'm not a pharmacologist.

6 Q. Are you a sociologist?

7 A. No, you wouldn't say I'm a
8 sociologist.

9 Q. Are you an epidemiologist?

10 A. No, I'm not an epidemiologist.

11 Q. Have you ever worked for a
12 manufacturer of pharmaceuticals?

13 A. Worked for. Not in an employment
14 relationship. As a consultant a few times.

15 Q. In connection with litigation?

16 A. Yes.

17 Q. Have you ever worked as an employee of
18 a distributor of pharmaceuticals?

19 A. Never as an employment relationship.

20 Q. Have you ever worked for a pharmacy?

21 A. Not in an employment relationship.

22 Q. Have you ever worked for a law
23 enforcement agency?

24 A. No.

1 Q. Are you an expert in law enforcement?

2 A. I wouldn't say I'm an expert in law
3 enforcement, no.

4 Q. Have you ever worked for the DEA?

5 A. Never worked for the DEA.

6 Q. Are you a DEA expert?

7 A. No, I'm not a DEA expert.

8 Q. Are you a drug policy expert?

9 A. I work on drug policy, so I would say
10 yes.

11 Q. What areas, then, of drug policy do
12 you consider yourself to have an expertise in?

13 A. The economics of competition,
14 regulation in the pharmacy area.

15 Q. Anything else?

16 A. Those are pretty general.

17 Q. Have you ever worked for the FDA?

18 A. No, I don't think so.

19 Q. Are you an FDA regulatory expert?

20 A. No, I wouldn't say I'm an FDA
21 regulatory expert.

22 Q. Are you an FDA labeling expert?

23 A. No, I'm not.

24 Q. Are you an FDA expert?

1 A. Well, I know some things about the
2 FDA. But expert, I would say no.

3 Q. Are you an expert in addiction?

4 A. Well, one of my areas of economics
5 expertise is what's called behavioral health,
6 and that refers to mental health and substance
7 abuse, and addiction falls within that, yes.

8 Q. So how would you describe your
9 expertise in the area of addiction?

10 A. I'm an expert in the economics of
11 mental health and behavioral health, and there's
12 a lot of aspects of that.

13 Q. You're an expert in the economics of
14 behavioral health?

15 A. Yes.

16 Q. Okay.

17 A. And policy.

18 Q. Are you an expert in pain management?

19 A. No, I'm not.

20 Q. Are you an expert in neonatal
21 abstinence syndrome?

22 A. I am not a medical expert, no, in that
23 or other areas.

24 Q. Are you an expert in neonatal care?

1 A. Not in the -- no, no.

2 Q. In your report you periodically refer
3 to "bellwether governments." When you do so,
4 are you referring to Summit County and Cuyahoga
5 County?

6 A. Yes.

7 Q. Are you only referring to them?

8 A. Yes.

9 Q. And similarly, you refer in your
10 report to bellwether jurisdictions. When you do
11 so, again, are you referring to Summit County
12 and Cuyahoga County and only those two counties?

13 A. Yes.

14 Q. You refer in your report to
15 prescription opioid shipments. What do you mean
16 by that?

17 A. I mean shipments of -- I'm not sure.
18 I'm not clear about that question. Shipments of
19 opioid prescriptions to local areas.

20 Q. Well, I said, you refer in your report
21 to prescription opioid shipments. What do you
22 mean? And you said, I'm not sure about the
23 question, so I want to make sure you understand
24 the question.

1 A. Okay.

2 Q. There are references throughout your

3 report to prescription opioid shipments. I want

4 to make sure we're on the same page about what

5 you're referring to when you use the phrase

6 prescription opioid shipments.

7 A. Okay. I'm using them -- that term in

8 exactly the same way that Professor Cutler uses

9 it in his report, and it is the volume of

10 prescription opioids -- I'm trying not to use

11 the words in the question -- sent to the local

12 jurisdictions, the bellwether jurisdictions.

13 Q. Sent to pharmacies in those local

14 jurisdictions?

15 A. They would be sent to pharmacies, yes.

16 Q. Sent anywhere else besides pharmacies

17 in those local jurisdictions?

18 A. I'm not sure.

19 Q. Where else would these prescription

20 opioids be sent in the local jurisdictions

21 besides pharmacies, as you understand it?

22 A. They might be sent to healthcare

23 providers.

24 Q. Do you know one way or the other?

1 MR. SOBOL: Objection to the form.

2 A. I would have to go back and check and

3 see what Cutler did.

4 BY MR. KEYES:

5 Q. And when you refer to local

6 jurisdictions, are you referring again to

7 Cuyahoga County and Summit County?

8 A. Yes.

9 Q. And only those two counties?

10 A. Yes.

11 Q. In your report you refer to the opioid

12 epidemic. What do you mean by that?

13 A. I mean the very large death and

14 sickness associated with opioid use.

15 Q. Which drugs?

16 A. The prescription opioids.

17 Q. Do you include illegal drugs?

18 A. It depends on the context.

19 Q. What constitutes an epidemic, as you

20 use the term?

21 A. You know, a major public health issue

22 that affects many people.

23 Q. And when did the -- to use your term,

24 opioid epidemic, when did it start?

1 A. When did it reach epidemic

2 proportions? Is that the nature of your

3 question?

4 Q. Well, you refer in your report a

5 number of times to the opioid epidemic, and I

6 want to understand, when did it start, the

7 opioid epidemic?

8 A. There's two different ways I could

9 answer that: When did it become an epidemic,

10 which is when the epidemic started; or when some

11 prior causes were involved that started it, and

12 I'm not sure.

13 Q. When did the epidemic start? You just

14 gave me two --

15 A. You're not helping me here.

16 Q. You said when -- "there's two

17 different ways I could answer that: When did it

18 become an epidemic, which is when the epidemic

19 started." Okay. When did the epidemic start?

20 MR. SOBOL: Wait. Could you just put

21 a full question? Because I think the record is

22 a little bit unclear right now.

23 BY MR. KEYES:

24 Q. You've referred to opioid epidemic.

1 A. Yes.

2 Q. And I want to understand, from your

3 perspective based on the work you've done, when

4 do you understand that opioid epidemic started?

5 A. What I would say is that answering

6 your question in the sense of when did the

7 opioid crisis become an epidemic, it would have

8 been a gradual process, and the threshold of,

9 yes, we have an epidemic would have been, I

10 don't know, at the time the acceleration in

11 deaths took place, which is ten years ago.

12 Q. And what is your --

13 A. Excuse me, I want to make a

14 distinction between that answer and when events

15 that led to the epidemic started, which I

16 understand to be a different question.

17 Q. What was the peak of the opioid

18 epidemic?

19 MR. SOBOL: Objection.

20 A. Well, that depends on how you measure

21 the epidemic. And if you measure it by deaths

22 from opioids, we're still waiting for the peak.

23 BY MR. KEYES:

24 Q. What if you measure it another way?

1 MR. SOBOL: Objection.

2 BY MR. KEYES:

3 Q. You said you could measure it multiple

4 ways. What are the other ways you could measure

5 the peak of the opioid epidemic?

6 A. I would tend to measure the nature of

7 the epidemic by the harms that are caused by the

8 epidemic, and there are various ways to do that.

9 Some other metrics might show a different time

10 pattern.

11 Q. So if you use those other metrics,

12 when do you place in time the peak of the opioid

13 epidemic?

14 MR. SOBOL: Objection. Form.

15 A. Well, I wouldn't -- I think it's the

16 kind of question that defies a single answer

17 like "2011." As an economist interested in

18 policy, I would want to keep track of the

19 various kind of harms that were associated with

20 the opioid epidemic, and some go up more

21 quickly, some go up more slowly, some may have

22 even peaked. It's hard to give a year answer to

23 that question.

24 BY MR. KEYES:

1 Q. Have you studied the opioid epidemic?

2 A. Well, yes, I would say yes.

3 Q. So what has your study been?

4 MR. SOBOL: Objection.

5 BY MR. KEYES:

6 Q. When you say "yes," what have you done

7 to study the opioid epidemic?

8 A. Well, I've written two reports on this

9 in the last, whatever, ten months or so, that

10 involved a lot of study. I've taught about it.

11 That's -- I've helped prepare federal grant

12 proposals to contend with the opioid epidemic.

13 All those involve study.

14 Q. In your report you refer to

15 distributors a number of times. Who are the

16 distributors you're referencing?

17 A. The firms that distribute prescription

18 opioids.

19 Q. Can you name them?

20 A. I can name some. Cardinal Health,

21 McKesson.

22 Q. Can you name any others?

23 A. I'll stop there. Rochester Drug.

24 Not right now, no.

1 Q. So when you refer to distributors in

2 your report, you're referring to the firms that

3 distribute prescription opioids?

4 A. Yes.

5 Q. And you can think of Cardinal Health,

6 McKesson, and Rochester Drug?

7 A. Yes.

8 MR. SOBOL: Without the report in

9 front of him?

10 BY MR. KEYES:

11 Q. Can you think of any others?

12 MR. SOBOL: Without the report in

13 front of him?

14 MR. KEYES: Sure.

15 MR. SOBOL: Just so it's clear, the

16 report is in front of him, but you don't want

17 him to go through the report to answer the

18 question, right?

19 MR. KEYES: I'd like his answer.

20 BY MR. KEYES:

21 Q. What do you remember, without looking

22 at the report? We'll look at your report later.

23 A. Without looking at the report, I gave

24 you the ones I can think of.

1 Q. You also refer to the distributor

2 defendants a number of times. When you use that

3 term, who are you referring to?

4 A. The distributors who are defendants in

5 this case.

6 Q. Okay. And can you name any of those

7 besides the ones you just listed?

8 MR. SOBOL: Objection to the form.

9 A. Not without looking at my report.

10 BY MR. KEYES:

11 Q. What do you know about the role of

12 distributors in the supply chain?

13 MR. SOBOL: Objection to the form.

14 A. Well, I know in general what their

15 role is. They take product and move it to

16 retail.

17 I'm not sure what you're asking.

18 BY MR. KEYES:

19 Q. Have you ever studied their practices?

20 A. In connection with some of these

21 cases, I need to be aware of the general

22 business practices of wholesalers. And even in

23 my research on the economics of the pharmacy

24 sector, you know, one needs to be aware of the

1 role of wholesalers.

2 Q. What do you know about the role of

3 distributors in the supply chain that only

4 distribute to their own retail pharmacies?

5 MR. SOBOL: Object to the form.

6 A. What do I know about them? I'm sorry,

7 I'm not getting the point of your question.

8 BY MR. KEYES:

9 Q. Okay. Can you be more specific about

10 the policies and practices of distributors that

11 distribute to their own retail pharmacies?

12 MR. SOBOL: Objection to the form.

13 A. I'm still not sure what you're getting

14 at here. I'm sorry, I'm just not following what

15 you're asking.

16 BY MR. KEYES:

17 Q. Okay. We'll return to that.

18 You refer to opioids. And can you

19 turn to Page 4 of your report? Are you there?

20 A. Yes, I am.

21 Q. Okay. The last sentence of

22 Paragraph 6 in the middle of the page says, "In

23 discussing opioids, I follow the CDC's

24 definition, which includes both legal and

1 illicit opioids."

2 Do you see that?

3 A. I do, yes.

4 Q. Okay. So when you refer to opioids in

5 your report, you are referring to both legal and

6 illicit opioids, correct?

7 A. Well, it depends on the context. And

8 when I just -- which includes when I say both

9 legal and illicit, footnote 9, and that explains

10 what it means.

11 Q. Well, footnote 9 gives a definition

12 of -- the CDC definition of opioids, correct?

13 A. That's right.

14 Q. Okay. But you said in -- on Page 4

15 that when you discuss opioids, you follow the

16 CDC's definition, which includes both legal and

17 illicit opioids.

18 So I'm trying to understand, when

19 there are references later in the report to

20 opioids without any further clarification,

21 you're referring to both legal and illicit

22 opioids?

23 MR. SOBOL: Objection. Asked and

24 answered.

1 A. I would have to see the context to be

2 sure what is being meant.

3 BY MR. KEYES:

4 Q. Would you turn to Page 8 of your

5 report? Paragraph 12, "In preparing this

6 report, I, and staff under my direction:

7 analyzed data."

8 What specific data did you analyze?

9 A. The data I analyzed were the budget

10 information of the bellwether jurisdictions, the

11 bellwether governments.

12 Q. Can you be more specific? When you

13 refer to the budget information, what are you

14 referring to?

15 A. Okay. Each year for each county

16 there's a document that explains the functions

17 of and the expenditures of various divisions in

18 the county, and it's a lot of data that includes

19 breakdowns of expenditures in a division,

20 sometimes by purpose, sometimes by type of

21 expenditure, and it's those data that I analyzed

22 in order to determine damages in this case.

23 Q. What is that document called?

24 A. There's many documents. There's a

1 series of budget documents for Cuyahoga, and a

2 series of budget documents for Summit. It's

3 named later in my report.

4 Q. Okay. Anything that you would add

5 besides this budget information that you've

6 described when you refer to analyzing data?

7 A. That certainly was, you know, the very

8 large majority of what I analyzed.

9 Q. So besides budget information of the

10 two counties, what data did you personally

11 analyze?

12 A. That's why I'm wondering if there

13 might be something else that I'm not

14 remembering. Not that I can remember here.

15 Q. On Page 6, Paragraph 9 -- do you have

16 that in front of you?

17 A. Yes.

18 Q. -- you say, "Through review of the

19 Bellwether governments' budgets and expenditures

20 and interviews with Bellwether government

21 personnel, I have identified certain divisions

22 that are affected by the opioid epidemic, listed

23 here in Table IV.1."

24 Do you see that?

1 A. I do, yes.

2 Q. When you reference interviews with

3 bellwether government personnel, you're

4 referring to personnel of Summit County and

5 Cuyahoga County?

6 A. Yes.

7 Q. Which personnel?

8 A. I don't remember their names.

9 Q. Do you remember their titles?

10 A. Oh, there were --

11 MR. SOBOL: This is without looking at

12 his report, correct?

13 MR. KEYES: He has the report in front

14 of him.

15 MR. SOBOL: He has the report in front

16 of him, then why don't you direct him to the

17 page that has this information?

18 MR. KEYES: It's his report. He says

19 that through interviews with bellwether

20 government personnel he has identified certain

21 divisions that are affected by the opioid

22 epidemic.

23 BY MR. KEYES:

24 Q. I want to know who you interviewed.

1 Who are these bellwether personnel to whom

2 you're referring?

3 MR. SOBOL: My point is there's an

4 appendix, Materials Considered, and if you'd

5 like him to look at that, he may, and if you

6 want him to remember without looking at that,

7 then he won't.

8 BY MR. KEYES:

9 Q. Without looking at your report, you

10 said -- you already said you don't remember any

11 names. I'm asking, do you remember the titles

12 of the people?

13 MR. SOBOL: Without looking at the

14 materials considered, correct?

15 MR. KEYES: Sure.

16 A. There were budget officials, sheriff,

17 people from ADAMHS Board, budget director.

18 There was about 40 in total.

19 BY MR. KEYES:

20 Q. And did you personally participate in

21 these interviews?

22 A. No, not all, no.

23 Q. Again, I'm asking you about the

24 bellwether government personnel you interviewed.

1 A. That I personally interviewed?

2 Q. Yes.

3 MR. SOBOL: And you want him to do it

4 without looking at the materials considered,

5 correct?

6 MR. KEYES: For the moment, yes.

7 MR. SOBOL: Okay.

8 MR. KEYES: I don't think there's

9 anywhere in his report where he identifies any

10 interview with anyone who works for Summit

11 County or Cuyahoga County, but I don't want to

12 waste the time at this point to scan the report

13 for something that doesn't exist.

14 BY MR. KEYES:

15 Q. I want your recollection. When you

16 refer to interviews with bellwether government

17 personnel, you said those are personnel of

18 Summit County and Cuyahoga County, and I'd like

19 to know who are those people that you

20 interviewed?

21 A. These people were interviewed by my

22 staff.

23 Q. Did you interview any of these people,

24 to use your phrase?

1 A. They were all interviewed by my staff.

2 Q. Did you interview anyone who worked

3 for Summit County?

4 A. I can't remember 100 percent

5 whether -- which of the calls I may have been

6 on. I'm sorry, I just don't remember.

7 Q. Okay. So sitting here today, do you

8 remember participating in any interview of

9 anyone who works for Summit County?

10 A. I can't remember.

11 Q. Did you interview anyone at Cuyahoga

12 County?

13 A. I can't remember.

14 Q. Sitting here today, can you remember

15 participating in any interview of anyone who

16 worked for Cuyahoga County?

17 A. I can't remember.

18 Q. So when you say "Through review of the

19 Bellwether governments' budgets and expenditures

20 and interviews with Bellwether government

21 personnel, I have identified certain divisions

22 that are affected by the opioid epidemic listed

23 here in Table IV.1," you're referring

24 exclusively to interviews that someone else

1 conducted, correct?

2 A. These interviews --

3 MR. SOBOL: Object to the form.

4 Go ahead.

5 A. These interviews were conducted by

6 staff under my direction.

7 BY MR. KEYES:

8 Q. Okay. And did anyone take notes of

9 these interviews of anyone who worked for Summit

10 County or Cuyahoga County?

11 A. I'm not sure.

12 Q. Have you seen any notes --

13 A. I have not.

14 Q. -- that anyone took of any interviews

15 of anyone who worked for Cuyahoga County or

16 Summit County?

17 A. No, I have not.

18 Q. All right. So with respect to the

19 bellwether government personnel listed here, you

20 didn't participate in those interviews, and you

21 don't remember the names of who was interviewed

22 by your staff, correct?

23 A. Well, I told you what I could

24 recollect about that.

1 Q. Okay. And you said you don't remember

2 the names. I asked you for the titles, and you

3 told me budget officials, the sheriff, the

4 ADAMHS Board people, and the budget director.

5 That's what you said so far. Can you add to

6 that list?

7 A. Not as I sit here, no.

8 Q. Who interviewed the budget director

9 for Summit County?

10 A. Staff at Compass Lexecon.

11 Q. Who?

12 A. I'm not sure.

13 Q. Who interviewed the budget director at

14 Cuyahoga County?

15 A. I'm not sure. It would have been

16 staff at Compass Lex.

17 Q. Who interviewed officials from the

18 ADAMHS Board for Summit County?

19 A. Staff at Compass Lex.

20 Q. Who?

21 A. I'm not sure.

22 Q. Who interviewed the ADAMHS Board

23 officials for Cuyahoga County?

24 A. Same answer, it would have been staff

1 at Compass Lex. I'm not sure of the name of the

2 person.

3 Q. Who interviewed the sheriff for Summit

4 County?

5 A. It would be the same answer.

6 Q. Who interviewed the sheriff for

7 Cuyahoga County?

8 A. Same answer.

9 Q. Who interviewed the budget officials

10 for Summit County?

11 A. Same answer.

12 Q. Who interviewed the budget officials

13 for Cuyahoga County?

14 A. Same answer.

15 Q. So what you know sitting here today is

16 that personnel of Compass Lexecon interviewed

17 these officials, correct?

18 A. Yes, they did.

19 Q. And you don't know whether they took

20 notes, correct?

21 A. I've never seen any notes.

22 Q. Do you know whether they took notes?

23 A. I'm not sure.

24 Q. And you don't know the names of the

1 people they interviewed, correct?

2 A. Well, I've told you what I know.

3 Q. Were these interviews by Compass

4 Lexecon in person or over the phone?

5 A. They were a combination.

6 Q. Which of these officials were

7 interviewed in person?

8 A. I'm not sure.

9 Q. Which of these interviews -- officials

10 were interviewed over the phone?

11 A. I'm not sure.

12 Q. How many different interviews were

13 there with the budget officials from Summit

14 County?

15 A. There were about -- oh, for the budget

16 officials only? For someone like that, there

17 likely would have been multiple interviews.

18 Q. You say "likely." Do you know the

19 number of interviews that Compass Lexecon

20 conducted of budget officials in Summit County?

21 A. I don't know the count, no.

22 Q. How about for the budget officials in

23 Cuyahoga County?

24 A. Same answer.

1 Q. Same answer for the sheriff for Summit
2 County?
3 A. Same answer.
4 Q. Same answer for the sheriff of
5 Cuyahoga County?
6 A. Same answer.
7 Q. Same answer for the ADAMHS Board
8 officials for either Summit County or Cuyahoga
9 County?
10 A. Same answer.
11 Q. Same answer for the budget director
12 for Summit County or Cuyahoga County?
13 A. Same answer.
14 Q. Now, would you turn to Page 8 of your
15 report? Paragraph 12, "In preparing this
16 report, I, and staff under my direction:
17 analyzed data; reviewed economic literature,
18 court filings, documents produced in this
19 litigation, public information and deposition
20 testimony; and spoke with representatives of the
21 Bellwether governments."
22 Do you see that?
23 A. Yes.
24 Q. And again, that reference to

1 bellwether governments is a reference to
2 representatives of Summit County and Cuyahoga
3 County, correct?
4 A. That's correct.
5 Q. And just seeing this language, does
6 that spark any recollection of you speaking with
7 anyone who was a representative of either Summit
8 County or Cuyahoga County?
9 A. No, it doesn't.
10 Q. Okay. Would you turn to Page 28 of
11 your report? In Paragraph 51, about halfway
12 down there's a sentence that begins "In
13 addition."
14 Do you see that?
15 A. Yes.
16 Q. "In addition, I and members of my team
17 met with local officials to confirm my
18 understanding of both the activities undertaken
19 by these divisions and whether those activities
20 had been affected by the opioid crisis."
21 Do you see that?
22 A. Yes, I do.
23 Q. And when you refer to local officials,
24 you're talking about officials of Cuyahoga

1 County and Summit County, correct?
2 A. I am.
3 Q. Okay. But you didn't meet with any
4 officials of Summit County or Cuyahoga County,
5 correct?
6 A. Well, members of my team did.
7 Q. You said "I and members of my team met
8 with local officials." That's not accurate,
9 correct?
10 A. It depends on how you regard the
11 subject of the sentence.
12 Q. I may be missing something, but I
13 understand the subject to be I and my members --
14 and members of my team.
15 A. I think I clarified that these
16 interviews were conducted by members of my team.
17 Q. Exclusively?
18 A. Not by me.
19 Q. Right.
20 So it is inaccurate to say, I met with
21 local officials to confirm my understanding?
22 MR. SOBOL: Objection to the form.
23 A. That's not what the sentence says.
24 BY MR. KEYES:

1 Q. It says "I and members of my team."
2 A. Yes, that's correct.
3 Q. Okay. Is this statement accurate that
4 you and members of your team met with local
5 officials? Yes or no, is it accurate?
6 MR. SOBOL: Objection.
7 A. Yes.
8 BY MR. KEYES:
9 Q. Would you turn to Page 21 of your
10 report? Are you there?
11 A. Yes.
12 Q. In Paragraph 37 you say, "One transfer
13 is 'Rev-FTS Social Services 1,' which DCFS
14 personnel explained comes into the county as a
15 lump sum to be used towards any social service."
16 Do you see that language?
17 A. I do, yes.
18 Q. What DCFS personnel is this sentence
19 referring to?
20 A. I'm not sure.
21 Q. What does DCFS stand for?
22 A. Division of Children and Family
23 Services.
24 Q. And when you refer here to DCFS

1 personnel, you're referring to DCFS for which
 2 county?
 3 A. This is Cuyahoga.
 4 Q. And who, if you didn't speak with the
 5 DCFS personnel, who did?
 6 A. This would have been staff at Compass
 7 Lex.
 8 Q. Which staff at Compass Lexecon spoke
 9 with DCFS personnel?
 10 A. I'm not sure.
 11 Q. When did they speak with the DCFS
 12 personnel?
 13 A. It would have been sometime in the,
 14 like I say, July to September time frame.
 15 Q. And who specifically at DCFS provided
 16 this explanation?
 17 A. I don't know.
 18 Q. Was this explanation given by these
 19 unspecified DCFS personnel in person or over the
 20 phone?
 21 MR. SOBOL: Objection to the form.
 22 A. I'm not sure.
 23 BY MR. KEYES:
 24 Q. Did they take notes?

1 A. I don't know.
 2 Q. So how did you come to learn what DCFS
 3 personnel explained when it came to Rev-FTS
 4 Social Services 1?
 5 A. I would have spoken to a staff member
 6 at Compass Lex about this.
 7 Q. Okay. But which staff person at
 8 Compass Lexecon did you speak with?
 9 A. I don't remember.
 10 Q. When you got an update about what
 11 budget officials for either of the counties had
 12 said, who reported to you what they said?
 13 MR. SOBOL: Objection.
 14 A. Where are you now?
 15 BY MR. KEYES:
 16 Q. Well, earlier we talked about
 17 interviews with personnel of Summit County and
 18 Cuyahoga County. You didn't remember the names
 19 of the people, but -- and you didn't remember
 20 titles, but you said they included budget
 21 officials.
 22 A. Yes.
 23 Q. Okay. So who reported to you what
 24 these budget officials said?

1 A. Okay. It would have been staff at
 2 Compass Lex.
 3 Q. Who?
 4 A. I'm not sure.
 5 Q. Who reported to you what the sheriff
 6 for Summit County or Cuyahoga County said in
 7 these interviews?
 8 A. It would have been a staff member at
 9 Compass Lex, and I don't remember the person's
 10 name.
 11 Q. Who reported to you what the ADAMHS
 12 Board officials for Summit County or Cuyahoga
 13 County said in these interviews?
 14 A. It would have been a staff member at
 15 Compass Lex, and I don't remember the person's
 16 name.
 17 Q. Who reported to you what the budget
 18 director for Summit County or Cuyahoga County
 19 said in these interviews?
 20 A. It would have been a staff member at
 21 Compass Lex, and I don't remember the person's
 22 name.
 23 Q. So is it fair to say that you didn't
 24 participate in any interviews with anyone who

1 works for Summit County or Cuyahoga County,
 2 correct?
 3 MR. SOBOL: Objection.
 4 A. Well, that's not what I said earlier.
 5 BY MR. KEYES:
 6 Q. Did you speak with anyone who works
 7 for Summit County or Cuyahoga County?
 8 MR. SOBOL: Objection.
 9 A. I believe you already asked that, and
 10 I said I may have participated in some of the
 11 phone interviews, but I just don't remember.
 12 BY MR. KEYES:
 13 Q. Okay. You don't remember anything
 14 that was said? If you participated in those,
 15 you don't remember what was said?
 16 MR. SOBOL: Objection.
 17 A. I'm sorry, I don't.
 18 BY MR. KEYES:
 19 Q. And you don't remember who those
 20 people were who participated in the interviews?
 21 A. I'm sorry, I don't.
 22 Q. So what you do know is that the
 23 references to interviews throughout this report
 24 are interviews conducted by someone at Compass

1 Lexecon?

2 A. Primarily, yes.

3 Q. Well, who else besides the people at

4 Compass Lexecon interviewed employees of Summit

5 County or Cuyahoga County?

6 A. Well, I may have been involved in some

7 of the phone interviews.

8 Q. Right. You've said that. May, may

9 not have been.

10 A. I don't want you to forget it.

11 Q. Okay. Can you tell me anything about

12 any conversations that you participated in with

13 anyone at Summit County or Cuyahoga County?

14 MR. SOBOL: Objection to the form.

15 BY MR. KEYES:

16 Q. Anything at all?

17 MR. SOBOL: Objection.

18 A. Okay. I'm thinking. I can't recall

19 anything in particular, no.

20 BY MR. KEYES:

21 Q. Okay. And who of the people you named

22 earlier would have conducted these interviews?

23 A. I would have expected all the people I

24 named earlier -- not Evan, most likely not, and

1 most likely not Hal. So it would have been

2 primarily Alice and Erica.

3 Q. And why do you say that?

4 A. Hal and Evan had somewhat different

5 roles.

6 Q. If we want to reconstruct what was

7 covered in these interviews, what would we need

8 to do?

9 MR. SOBOL: Objection.

10 A. I suppose you would need to find

11 someone with a better memory, number one. And

12 talk to the people who were there.

13 BY MR. KEYES:

14 Q. Either the people who were conducting

15 the interview from Compass Lexecon or the people

16 who were interviewed?

17 A. It would be my thought, yeah.

18 MR. KO: Okay. Andy, we've been going

19 for about an hour and a half, so whenever -- if

20 you reach a good point to take a break.

21 MR. KEYES: Yes, let me just finish

22 one point and then take a break.

23 BY MR. KEYES:

24 Q. Would you turn to Page 35 of your

1 report? Are you there?

2 A. Yes.

3 Q. Okay. And on Page 35, Paragraph 59,

4 you say, "From these expenditure data, I

5 identify those costs that would be expected to

6 vary in response to changes in the services

7 provided by these divisions. This

8 identification was also informed by discussions

9 with the personnel in the respective divisions."

10 Do you see that?

11 A. Yes.

12 Q. Okay. What respective divisions are

13 you talking about? Are you talking about what

14 you identify in your report as the affected

15 divisions?

16 A. Yes.

17 Q. So which personnel in these divisions

18 provided information that informed your

19 identification of the costs that would be

20 expected to vary?

21 A. I don't remember the names.

22 Q. Do you remember their titles?

23 A. Only what I provided in my answer

24 earlier.

1 Q. Do you remember their functions within

2 the divisions?

3 A. These would be people who understand

4 the budgets.

5 Q. And who conducted these interviews or

6 discussions with the so-called personnel in the

7 respective divisions?

8 A. This would have been staff at Compass

9 Lexecon.

10 Q. Do you know who?

11 A. I'm not sure which interview was

12 conducted by which staff member. It would have

13 been Alice and Erica primarily.

14 Q. And how many discussions were there

15 with the personnel in each of these affected

16 divisions?

17 A. It was about 40 in total.

18 Q. How do you know that?

19 A. I just remember being aware of that.

20 Q. From whom?

21 A. I've been in contact with staff at

22 Compass Lex, and I was interested in making sure

23 we were doing this thoroughly enough and

24 checking to see, well, what's happened, and

1 that's the number that sticks in my mind.

2 Q. Okay. And were these discussions with

3 the personnel in the respective divisions over

4 the phone or in person?

5 A. They would have been a combination.

6 Q. How do you know that?

7 A. Well, I know it from talking to staff

8 at Compass Lex.

9 Q. Were notes taken in connection with

10 any of these so-called discussions with the

11 personnel in the respective divisions?

12 MR. SOBOL: Objection to the form.

13 A. I don't know.

14 MR. KEYES: All right. Why don't we

15 take a break.

16 THE VIDEOGRAPHER: The time is

17 10:34 a.m., and we're off the record.

18 (Whereupon, a recess was taken.)

19 THE VIDEOGRAPHER: The time is

20 10:56 a.m., and we're on the record.

21 BY MR. KEYES:

22 Q. Professor, you said that Compass

23 Lexecon conducted these interviews at your

24 direction. What directions did you give Compass

1 Lexecon?

2 A. Well, I wanted to confirm that the

3 divisions involved were affected by the opioid

4 crisis, and then to confirm that the activities

5 that the divisions involved could be affected by

6 the opioid crisis, and confirm an understanding

7 of what the various budget items and cost

8 categories consisted of.

9 Q. You said you wanted to confirm those

10 things.

11 My question was, what direction did

12 you give to Compass Lexecon before they

13 conducted these interviews?

14 A. Well, to seek confirmation. The

15 material, the printed material has information

16 about divisions' budgets and division

17 activities, but then these need to be confirmed

18 by interviews.

19 Q. So did you prepare charts that set

20 forth your understanding of which divisions were

21 affected and which costs were affected such that

22 those charts were then shared with personnel in

23 Summit County or Cuyahoga County to get them to

24 confirm your understanding?

1 MR. SOBOL: Objection.

2 A. I don't recall any charts that were

3 used.

4 BY MR. KEYES:

5 Q. How about work product?

6 A. Work product?

7 Q. Sure. Charts, analyses. I asked you

8 what directions you gave. You said your purpose

9 was to confirm your understanding. So how did

10 you or Compass Lexecon go about interviewing

11 Summit County and Cuyahoga County officials to

12 confirm your understanding?

13 MR. SOBOL: Objection.

14 A. How did we go about it? Just a matter

15 of talking to people. Unless I'm missing

16 something in your question.

17 BY MR. KEYES:

18 Q. Well, did you communicate to Compass

19 Lexecon a specific understanding you had that

20 they then needed to confirm with certain

21 personnel?

22 MR. SOBOL: Objection.

23 A. As I mentioned, the budget documents

24 indicate how much divisions spend, and they

1 describe the nature of the activities of the

2 division which, you know, upon reading, say,

3 okay, this might be something affected by the

4 opioid crisis. Then it's a matter of saying,

5 okay, are they really affected by the opioid

6 crisis? How do we understand the cost

7 categories within that division? As far as I

8 know, it was all done by interview.

9 BY MR. KEYES:

10 Q. Okay. You said you reviewed budget

11 documents?

12 A. Yes.

13 Q. And these are documents that

14 articulate what dollars will be budgeted in a

15 particular year for a particular division?

16 A. Yes, more or less. Some of them are

17 actual -- some of the actuals you would say what

18 was spent, and some would be budgeted. For

19 2018, I guess, was budgeted and -- 2018 was

20 budgeted at the time we had the documents.

21 Q. And who did the review of these budget

22 documents, you or Compass Lexecon?

23 A. I did a lot of the review of those

24 documents.

1 Q. So tell me how you would look at a
2 budget document to identify affected divisions
3 or affected costs?
4 MR. SOBOL: Objection.
5 A. Well, you -- these things are 100 or
6 200 pages, they're public documents, and I made
7 sure I understood the document and understood
8 the nature of the division organization and read
9 about the division's activities and made an
10 initial decision about what looked to me like
11 divisions that would be affected.
12 BY MR. KEYES:
13 Q. Okay. So you reviewed these documents
14 to identify which divisions were affected by the
15 opioid crisis --
16 MR. SOBOL: Objection.
17 BY MR. KEYES:
18 Q. -- correct?
19 MR. SOBOL: Objection.
20 A. Well, that was one of the purposes,
21 yeah.
22 BY MR. KEYES:
23 Q. And you said you made an initial
24 decision.

1 A. I did say that, yes.
2 Q. Okay. And so why didn't you leave it
3 at that, based on reviewing the budget
4 documents? Why did you take another step?
5 A. Well, I wanted to make sure I was
6 going in the right direction.
7 Q. And why weren't you certain that you
8 were going in the right direction just based on
9 your review of the budget documents?
10 MR. SOBOL: Objection.
11 A. It just seemed prudent to me to make
12 contact and get clarification.
13 BY MR. KEYES:
14 Q. Why?
15 MR. SOBOL: Objection.
16 A. As I said, it just seemed sensible to
17 talk to officials in the divisions.
18 BY MR. KEYES:
19 Q. Right. But why? Why was it sensible
20 to you to talk to officials in the affected
21 divisions?
22 MR. SOBOL: Objection. Asked and
23 answered.
24 A. I would think it's, you know, in the

1 normal course of what I would do. In the normal
2 course of my research, if I'm trying to identify
3 costs of some kind, and I have the opportunity
4 to talk to people who are actually working
5 there, that's something, you know, someone like
6 me or an economist would generally do. It just
7 seemed natural to me.
8 BY MR. KEYES:
9 Q. It's generally your practice?
10 A. Yeah.
11 Q. And was it your practice here because
12 you had some questions or some uncertainty based
13 on your review of the budget documents?
14 MR. SOBOL: Objection.
15 A. Well, I review the budget documents,
16 here's my judgment, talk to local officials to
17 confirm the judgment.
18 BY MR. KEYES:
19 Q. Did -- after you reviewed the budget
20 documents, did you believe that they told the
21 whole story and you had all the information you
22 needed?
23 MR. SOBOL: Objection.
24 About what?

1 BY MR. KEYES:
2 Q. To identify affected divisions or
3 affected costs.
4 A. Well, as I say in my report, I don't
5 think I necessarily got everything, so what I
6 tried to do was to look where larger budget
7 divisions were involved in terms of their
8 spending, where it seemed more evident that
9 these divisions would be involved in the opioid
10 crisis, and pursue those. There are probably
11 things left on the table in the sense of other
12 divisions that either weren't spending a lot or
13 not so obvious that I or the staff didn't talk
14 to. So in the sense of not knowing everything,
15 I probably -- I'm sure that I missed some
16 things.
17 Q. Okay. You say in your report at
18 Paragraph 51, "To identify affected divisions,
19 I, and my team under my direction, reviewed
20 budget and expenditure information from the
21 Bellwether governments."
22 Do you see that?
23 A. Yes.
24 Q. So I want you to identify with as much

1 precision as you can what this budget
2 information was.

3 A. Okay. They are the annual reports of
4 the bellwether governments about spending and
5 revenues. The exact name of them are -- is
6 somewhere later in my report. They come out
7 every year.

8 Q. Okay. So when you say that you and
9 the team under your direction reviewed budget
10 information, are you referring to anything
11 besides these annual reports?

12 A. That's what I'm referring to here.

13 Q. Okay. And when you refer to you and
14 your team under your direction reviewing
15 expenditure information, what expenditure
16 information are you talking about?

17 A. This would be the same documents.

18 Q. Okay. So when you refer to budget
19 information and expenditure information, you're
20 referring to these annual reports?

21 A. Yes.

22 Q. Did you look at anything besides these
23 annual reports in order to identify affected
24 divisions?

1 A. I don't recall, so I don't want to say
2 definitely no or definitely yes. I may have
3 looked at other materials.

4 Q. But sitting here today, what you
5 remember looking at are the annual budget
6 reports for Summit County and Cuyahoga County?

7 A. Yes, I can absolutely confirm that I
8 looked at many of those documents. I don't
9 recollect what other ones I may have looked at.

10 Q. Now, when you looked at these annual
11 reports for Summit County and Cuyahoga County,
12 what was it in the reports that helped you
13 identify whether they were affected or not by
14 the opioid crisis?

15 A. Well, primarily the functions,
16 reported functions of the division.

17 Q. What do you mean by that, "the
18 reported functions"?

19 A. What they did.

20 Q. Okay.

21 A. For example, public safety, pursuit of
22 criminals, Children and Family Services taking
23 care of kids who need to be taken out of homes.

24 Q. Anything more specific than that?

1 A. Sorry, with respect to what?

2 Q. With respect to what you saw in these
3 annual budget documents that identified for you
4 that they were affected by the opioid crisis.

5 A. Okay. In general, the areas of
6 affect, or effect, that I would be looking for
7 have to do with crime and public safety, and so
8 I was interested in divisions that had to do
9 with crime and public safety. I was interested
10 in Children and Family Services, so divisions
11 that were active in that area were also ones I
12 focused on. And public health.

13 Q. Is it fair to say that if you read in
14 the annual reports that the particular division
15 had something to do with crime and public
16 safety, you would consider it an effective
17 division?

18 MR. SOBOL: Objection.

19 A. I would consider it to be considered.
20 I think it's not -- you need to do more.

21 BY MR. KEYES:

22 Q. Okay. Same question for child and
23 family services, is it fair to say that if you
24 read in the annual reports that a particular

1 division had something to do with Children and
2 Family Services you would consider it an
3 affected division?

4 MR. SOBOL: Objection.

5 A. Well, I would investigate whether it
6 was an affected division.

7 BY MR. KEYES:

8 Q. Same question for public health --

9 MR. SOBOL: Objection.

10 BY MR. KEYES:

11 Q. -- again, you would do more, you would
12 investigate?

13 MR. SOBOL: Objection.

14 A. Yes.

15 BY MR. KEYES:

16 Q. So tell me what you would do to
17 investigate. You've read the budget reports,
18 you see that a division has something to do with
19 crime and public safety or Children and Family
20 Services or public health, it's now to be
21 considered, as you said, but you need to do more
22 and you need to investigate, right?

23 A. Yeah, that's fair.

24 Q. Okay. So what did you do to

1 investigate?

2 A. Well, each division in the budget

3 documents actually has a pretty extensive report

4 on what they do and what their activities, so

5 you do the first level investigation, then go

6 back into the document and read more to be able

7 to characterize more accurately the nature of

8 how the division might be affected.

9 Then the next -- in that process there

10 would be interviews with the officials to make

11 sure that we were understanding those activities

12 correctly, and then go to the numbers, go to the

13 cost numbers and associate the budget items or

14 expenditure items to the activities as best we

15 could.

16 Q. You said you would go to the officials

17 to confirm your understanding.

18 A. Yes.

19 Q. Yes?

20 A. I said that.

21 Q. Okay. So how did you communicate your

22 understanding to the people who were actually

23 going to talk to the officials?

24 A. Well, you seem to be making this

1 process more complicated than it was. We

2 understand how the opioid crisis can impact

3 families, how it can impact crime, how it can

4 impact public health. There didn't need to be a

5 lot of explanation to be able to confirm that

6 police officers were not only arresting drug

7 criminals, but they would have been involved in

8 first responder activities. They may be the

9 first on the scene with an opioid overdose.

10 Firefighters may be the first on the scene with

11 respect to opioid overdose. I'm confident that

12 I and members of my team had a joint

13 understanding of what we are looking for in

14 these divisions in terms of the nature of their

15 activities and how might they be influenced by

16 the opioid crisis.

17 Q. When you refer to your team --

18 MR. SOBOL: Have you finished your

19 answer?

20 THE WITNESS: Yes.

21 BY MR. KEYES:

22 Q. When you refer to your team having a

23 joint understanding, you're referring to

24 yourself and the Compass Lexecon personnel?

1 A. Yes, I am.

2 Q. Okay. Again, I'm just trying to

3 understand what you did. So you said you

4 reviewed these budget reports. You said if it

5 had to do with public safety, children and

6 family services, or crime that you would -- or

7 public health, you would identify it as a

8 potentially affected division, but you had to do

9 more. You said that you then went and read more

10 about those divisions in the budget documents,

11 correct?

12 A. Yes.

13 Q. And then you said at some point you

14 went to the officials of the two counties to

15 confirm your understanding, right?

16 A. That's correct.

17 Q. But you didn't talk to those officials

18 yourself?

19 MR. SOBOL: Objection.

20 A. Well, I think we've covered this

21 already.

22 BY MR. KEYES:

23 Q. Right, because you --

24 MR. SOBOL: He hasn't finished his

1 answer.

2 BY MR. KEYES:

3 Q. Because you --

4 MR. SOBOL: He has not finished his

5 answer.

6 A. I do have one more sentence to say

7 about that.

8 I've already -- we've already

9 discussed this extensively, and it was primarily

10 done by Compass Lexecon, and I don't remember

11 whether or not I was involved in some of the

12 calls.

13 BY MR. KEYES:

14 Q. Right.

15 But you formed an understanding based

16 on the review of these budget reports you've

17 already described, and you wanted to confirm

18 that understanding. How did you communicate

19 your understanding to the Compass Lexecon people

20 who then went to the local officials to confirm

21 that understanding?

22 MR. SOBOL: Objection.

23 A. I'm going to repeat myself, because it

24 wasn't that complicated. I think we had a joint

1 understanding of what it means to be impacted by
 2 the opioid crisis. Crime, kids, services
 3 needed, first responders, this wasn't higher
 4 math, what we're looking for here.
 5 BY MR. KEYES:
 6 Q. Did you give written directions to
 7 Compass Lexecon setting forth your understanding
 8 and what they should try to confirm with the
 9 local officials?
 10 A. No, I don't think so.
 11 Q. And when the Compass Lexecon personnel
 12 spoke with the local officials, did they ever
 13 report back to you on what they learned?
 14 A. Yes, they did.
 15 Q. And what did they tell you about these
 16 interviews with these officials that confirmed
 17 your understanding of which divisions were
 18 affected?
 19 MR. SOBOL: Generally speaking.
 20 A. They, after the interviews, had a
 21 confirmation that the budget categories were
 22 correct and being potentially affected by the
 23 opioid crisis.
 24 BY MR. KEYES:

1 Q. And was it at that point that then you
 2 moved to the second step, which is for each
 3 affected division to identify what you call
 4 affected costs?
 5 MR. SOBOL: Objection.
 6 A. Broadly speaking, that's correct.
 7 BY MR. KEYES:
 8 Q. And in your approach, affected costs
 9 are costs that vary as the composition of
 10 opioid-related services provided by that
 11 division changes?
 12 A. Broadly that's correct.
 13 Q. Okay. And you -- go ahead.
 14 A. They may vary in the activity against
 15 which they're directed.
 16 Q. And you break so-called affected costs
 17 down into two buckets, compensation costs and
 18 non-compensation costs, correct?
 19 A. That's correct.
 20 Q. Okay. So I want to review your
 21 process for identifying the affected costs for
 22 any particular affected division. Okay? You
 23 say you looked at detailed expenditure data for
 24 Cuyahoga County.

1 A. Yes, I did.
 2 Q. And you say you looked at expenditure
 3 data for Summit County.
 4 A. I did.
 5 Q. Would you turn to Page 34 of your
 6 report?
 7 A. Sure.
 8 Q. Are you there?
 9 A. Yes.
 10 Q. At the bottom of Page 34 you say,
 11 "Detailed expenditure data for Cuyahoga County
 12 were obtained from the Cuyahoga County Budget
 13 Office for all divisions and departments within
 14 these divisions."
 15 Do you see that?
 16 A. Yes.
 17 Q. And then you drop a footnote, footnote
 18 82, which references one document, Bates number
 19 CUYAH_014627783.
 20 Do you see that?
 21 A. I do, yes.
 22 Q. Okay. So is that the document that
 23 contains this detailed expenditure data for
 24 Cuyahoga County?

1 MR. SOBOL: That's referenced here.
 2 A. I would -- I don't remember what
 3 014627783 is.
 4 BY MR. KEYES:
 5 Q. Well, you say that -- let's turn this
 6 over -- you also received expenditure data for
 7 Summit County from the county government, and
 8 you list SUMMIT_001952976.
 9 Do you see that?
 10 A. I do, yes.
 11 Q. Did you look at any other expenditure
 12 data for Summit County?
 13 A. I looked at every year for these
 14 places.
 15 Q. Okay.
 16 A. And I don't remember the footnotes or
 17 what these things exactly are referring to, but,
 18 yeah, a lot of documents.
 19 Q. So were these budget documents or
 20 something different when you reference this
 21 expenditure data?
 22 A. Well, I --
 23 MR. SOBOL: Objection to form.
 24 A. The expenditure data were actuals that

1 came from the annual reports which were actual
2 expenditures.

3 The budgeted, as I mentioned earlier,
4 I believe, referred just to the last year.

5 BY MR. KEYES:

6 Q. So other than the two files that are
7 listed here in these footnotes, what expenditure
8 data did you look at for either Cuyahoga County
9 or Summit County?

10 A. Well, as I said, I don't know exactly
11 what this Bates is referring to or the one in
12 footnote 83 without checking exactly what
13 documents are referred to there, but I looked at
14 the budget documents for all the years for both
15 jurisdictions.

16 Q. Other than the budget documents, did
17 you look at any expenditure data?

18 A. By that I mean expenditure data. I
19 try to keep that clear, but maybe I haven't been
20 as clear as I should be on that.

21 So for the years up through, I
22 believe, 2017, these are reports of what was
23 actually spent by category and sometimes by line
24 item in these affected divisions. For 2018, the

1 actuals were not yet in at the time I did this,
2 and there the budgets needed to be looked at.
3 So they were planned expenditures, you would
4 say.

5 Q. So is it one document that contained
6 all the expenditure data for Cuyahoga County up
7 through 2017?

8 A. Some of the documents included more
9 than one year, but there was an annual report
10 every year.

11 Q. Okay. Same question for Summit
12 County, was it one document that contained all
13 the expenditure data for Summit County up
14 through 2017?

15 A. Some of the documents included more
16 than one year, but it was a report for each
17 year.

18 Q. Okay. Well, you tell me, because you
19 say in the very next sentence, Paragraph 59, you
20 say, "From these expenditure data, I identify
21 those costs that would be expected to vary in
22 response to changes in the services provided by
23 these divisions."
24 Do you see that?

1 A. Yes.

2 Q. And these expenditure data refers to
3 the two documents that were noted in footnotes
4 82 and 83 --

5 MR. SOBOL: Objection.

6 BY MR. KEYES:

7 Q. -- correct?

8 MR. SOBOL: Objection.

9 A. Well, I think I've commented on the
10 particular Bates numbers in those footnotes.
11 And I don't know exactly what that's referring
12 to, so it's hard for me to answer precisely with
13 respect to that Bates number. But what I can
14 tell you is I looked at expenditure data for
15 each division for each bellwether for each year.

16 BY MR. KEYES:

17 Q. So describe that data for me.

18 MR. SOBOL: Objection.

19 BY MR. KEYES:

20 Q. Tell me what you looked at.

21 A. It comes in a big book, and it is
22 organized around the organization of the
23 government. And then there are divisions and
24 sometimes departments within divisions, and

1 there is multiple tables that describe in
2 summary form and in detail form what the
3 spending is for each unit per division.

4 Q. How did you use that data, then, to
5 identify what you call affected costs?

6 A. Okay. The purpose here is to
7 identify, as you said in your earlier question,
8 costs that might vary as the demands put on
9 public services by the opioid crisis vary.

10 So, for example, there will be some
11 costs that do not fall in that category. If
12 there's an IT system and IT staff with respect
13 to the police department, I made the assumption
14 for labor categories that seemed to be
15 associated with kind of fixed costs or
16 overhead-type expenditures that those people
17 would not -- the cost associated with those
18 people would not be affected as the opioid
19 crisis went up or down.

20 But there was other personnel such as
21 police officers who are involved in crime
22 prevention who would be affected by the opioid
23 crisis. And the budget documents are actually
24 quite detailed in terms of the job title, the

1 salaries of these people, enabling me in most
 2 cases to be -- to make a pretty good
 3 determination, in my view, that the costs are
 4 allocated reasonably between those that might
 5 and might not be affected by the waxing and
 6 waning of demands presented by opioids.

7 Q. So you would do this based on -- what
 8 information --

9 MR. SOBOL: You just asked an
 10 open-ended question. You should find out
 11 whether the witness has finished his answer.

12 BY MR. KEYES:

13 Q. Have you finished with your answer?

14 A. Yes, I am.

15 Q. So how did you go about specifically
 16 going through the expenditure data to determine
 17 whether something was overhead or not overhead?

18 A. It was, you know, my judgment based on
 19 the job activities of the people involved.

20 Q. Did you use someone else's judgment to
 21 assist you, or solely your judgment?

22 A. I think we discussed it as a team at
 23 different times, yeah.

24 Q. Who else did you discuss it with?

1 A. This would have been a Compass Lex
 2 team effort.

3 Q. Who?

4 A. Same team we discussed. Hal would
 5 have been in this, I'm not sure about Evan, but
 6 Alice and Erica.

7 Q. And then how would you know whether
 8 something was fixed or not, to use your term,
 9 based on your review of the expenditure data?

10 A. Well, once I made a determination that
 11 I put it into fixed costs, if it weren't fixed
 12 then I'm being conservative, so I tried to be
 13 reasonable and even conservative in that
 14 allocation. And if I put the IT staff in the
 15 fixed cost area, even if they're not, even if
 16 more crimes lead to overtime of the IT guys,
 17 then since I'm not counting it, I didn't worry
 18 about it after that.

19 Q. You've identified IT as an example of
 20 a fixed cost, right?

21 A. Yes.

22 Q. My question is broader than that.
 23 When you're looking through the costs
 24 in the expenditure data, how do you determine

1 whether that cost is fixed or not?

2 A. It was a matter of judgment.

3 Q. Okay. And how did you bring your
 4 judgment to bear to determine for any particular
 5 cost whether it was fixed or not?

6 A. Well, economists deal in costs of
 7 different types, there's marginal costs, there's
 8 variable costs, there's fixed costs, so as just
 9 general training one is oriented to this kind of
 10 distinction. And I went through the budget, in
 11 many cases job title by job title, to make a
 12 determination of, with respect to the
 13 compensation costs, where people belonged in one
 14 or the other.

15 Q. So you looked at this expenditure
 16 data, you used your judgment to determine
 17 whether it was fixed or not, overhead or not?

18 A. Broadly speaking, that's correct.

19 Q. Okay. And then you say "This
 20 identification" -- that is, the identification
 21 of varied costs, variable costs -- "was also
 22 informed by discussions with the personnel in
 23 the respective divisions."

24 How was that accomplished?

1 A. I mean, it would have been the same
 2 process. Talking to them.

3 Q. So did you have a list that broke out
 4 all of the costs into variable costs and fixed
 5 costs, and that list was then provided to
 6 Compass Lexecon, and Compass Lexecon reviewed it
 7 with personnel from Summit County or Cuyahoga
 8 County?

9 MR. SOBOL: Objection.

10 A. It wasn't as mechanical as that.
 11 There had to be a classification into one or the
 12 other, so in that sense, yes, there was a list
 13 for each of the, you know, many, many
 14 expenditure categories for a particular
 15 division. So this was no, this was yes, this
 16 was no, this is yes. So that's -- in a sense
 17 there was a list.

18 The list wasn't -- didn't come from me
 19 to them. It came as a team effort to determine
 20 which of the things belong in one category or
 21 the other, and then it's confirmation that --
 22 you know, it's not mechanical, but general
 23 confirmation with officials in the local
 24 jurisdictions.

1 BY MR. KEYES:

2 Q. What do you mean it's not mechanical?

3 A. Well, it is what I just described it

4 to be, which to me wasn't a mechanical Tom's

5 list, CL's list, send list to officials. It

6 was, we made this determination, we checked with

7 them with respect to some things that might have

8 been unclear.

9 Q. When you said "we made the

10 determination," you're talking about you and

11 your Compass Lexecon team?

12 A. Yes, that was inputs from not just me.

13 Q. And based on the inputs from your team

14 and your judgment, you took every cost and you

15 put it into one category or the other, it was

16 either variable or it was fixed, correct?

17 MR. SOBOL: Objection.

18 A. Basically that's the methodology, yes.

19 BY MR. KEYES:

20 Q. What steps were taken then to take

21 that list that breaks every cost into variable

22 or fixed and confirm it with someone at the

23 county?

24 MR. SOBOL: Objection. Asked and

1 answered.

2 A. There, in most cases it's pretty clear

3 where a certain cost belongs, and in those cases

4 it's just pretty clear.

5 BY MR. KEYES:

6 Q. Meaning no one followed up with

7 someone at Summit County or Cuyahoga County,

8 correct?

9 MR. SOBOL: Objection.

10 A. Well, everything wasn't cleared with

11 officials in Summit County. If I were confident

12 that it was a variable cost, then I'm prepared

13 to stand behind it.

14 BY MR. KEYES:

15 Q. Okay. So I understand you formed your

16 judgment, every cost category was put into

17 variable cost or fixed cost, Compass Lexecon

18 participated in that process, correct?

19 A. Yes.

20 Q. If I understand you correctly, you

21 said that not every determination was then

22 cleared with officials from Summit County or

23 Cuyahoga County because you were so confident

24 you got it right --

1 MR. SOBOL: Objection.

2 BY MR. KEYES:

3 Q. -- right?

4 A. In many cases I was very confident

5 that this determination was correct.

6 Q. Okay. But there are other instances

7 where you weren't very confident, where there

8 was some step to go to the officials to confirm

9 your judgment as to whether it was a fixed or a

10 variable cost, right?

11 A. I believe there were some that were

12 unclear, and there was -- some additional work

13 had to be done by Compass Lexecon to make that

14 determination.

15 Q. Which ones were unclear?

16 A. I don't remember.

17 Q. And so for the ones that were unclear,

18 I realize you don't remember which ones they

19 were, but the ones that were unclear, you say

20 some additional work had to be done. I take it

21 that work was to go to people at Summit County

22 or Cuyahoga County to get them to tell you

23 whether you were right in either calling that

24 cost variable or fixed?

1 MR. SOBOL: Objection.

2 A. Well, let me give you an example which

3 I think will be helpful in understanding.

4 Initially the costs associated with

5 vehicles, police cars, was not put in the

6 variable category, and that seemed to me to be

7 overly conservative, that if police are riding

8 around and dealing with opioid problems they're

9 going to use their cars more frequently, and

10 some of their auto expenses would be properly

11 regarded as variable. So that means, okay, what

12 about this cost. We went back into the

13 documents, looked at the capital costs. Some of

14 them are in the capital budgets as opposed to in

15 the expenditure budget, so we take a look at

16 that, and what should be done about that.

17 And I'm not 100 percent sure that this

18 would have been talked about with the local

19 official, but that's an example of the kind of

20 thing where there was some uncertainty about how

21 we should handle police cars.

22 BY MR. KEYES:

23 Q. But I'm trying to get to your

24 methodology as a general matter.

1 You've gone through all of the costs
 2 for each of the affected divisions, and you've
 3 made a judgment whether that -- each cost is
 4 fixed or variable. You said some you were very
 5 confident about.
 6 A. Most I was very confident about.
 7 Q. And those didn't require any further
 8 confirmation?
 9 A. Not in my view.
 10 Q. But there were others where you were
 11 not very confident, correct?
 12 MR. SOBOL: Objection.
 13 A. Well, I just gave you an example of
 14 one.
 15 BY MR. KEYES:
 16 Q. Okay.
 17 A. That sort of looks like a fixed cost,
 18 but on the other hand, you can make an argument
 19 it's a variable cost.
 20 Q. And how do we reconstruct which ones
 21 you were very confident about and which ones you
 22 weren't?
 23 A. I'm confident in all the
 24 classifications that are available to you.

1 Q. How do we reconstruct which ones you
 2 were very confident on and which ones you were
 3 not very confident based on your review of the
 4 cost categories before you sought confirmation
 5 from some unspecified local officials?
 6 MR. SOBOL: Objection.
 7 BY MR. KEYES:
 8 Q. Is there any way to reconstruct that
 9 now?
 10 MR. SOBOL: Objection.
 11 A. I'm not sure that would be -- I think
 12 it's -- I'm sure you and everyone has been
 13 involved in these complicated decisions about
 14 something that is mostly conversation, and it's
 15 hard for me to think how one would reconstruct
 16 that beyond talking to the people.
 17 But even then, like, I can't tell you
 18 necessarily which of the categories, what we
 19 thought about IT, what we thought about health
 20 insurance costs, whether they would be regarded
 21 as fixed or variable. All those things were
 22 considered, and it was a process is all I can
 23 tell you.
 24 BY MR. KEYES:

1 Q. Okay. But again --
 2 A. Excuse me.
 3 The answer to that process of what I
 4 decided is described exactly in this report, and
 5 I'm very confident that the variable costs are
 6 variable, and if there's some evidence or some
 7 question you have about any particular cost,
 8 then I'm all for talking about it.
 9 Q. Okay. But which ones of those are you
 10 very confident about now because of the
 11 reassurance Compass Lexecon got from Summit
 12 County and Cuyahoga County officials?
 13 MR. SOBOL: Objection.
 14 A. I wouldn't have included something in
 15 the variable cost category unless I were
 16 confident about it. Some of them seemed obvious
 17 to me. And compensation for beat cops, that's a
 18 variable cost. Some others, I don't remember
 19 the process, it may have been a team discussion,
 20 it may have been a confirmation with officials,
 21 but it was ultimately an economic decision about
 22 what are the variable costs associated with
 23 these divisions, taking what I considered to be
 24 a pretty conservative approach and not putting

1 everything into a variable, but to explicitly
 2 set aside stuff that -- cost categories that
 3 wouldn't seem in the short run to vary with the
 4 nature of, say, crime or the nature of why a
 5 child is taken from a home, why a corpse comes
 6 into the medical examiner. There's some things
 7 that don't vary with that, which I set aside.
 8 BY MR. KEYES:
 9 Q. Can you identify which of the cost
 10 categories you were not confident about based on
 11 your review of the expenditure data such that
 12 someone from Compass Lexecon went out to local
 13 officials to get some kind of confirmation?
 14 MR. SOBOL: Objection. Asked and
 15 answered twice.
 16 BY MR. KEYES:
 17 Q. Can you identify those today?
 18 MR. SOBOL: Objection. Asked and
 19 answered twice.
 20 A. I believe I answered that question
 21 completely a few minutes ago. If you'd like me
 22 to take another shot at it, I'm happy to do
 23 that. The cost categories that you see in my
 24 report, I'm confident in all those cost

1 categories. I use my judgment as an economist
 2 to identify what I thought were variable costs.
 3 Some of this involved discussion with team
 4 members who may have been more familiar with
 5 some of the operations of the division, and some
 6 of it may have involved confirmation with local
 7 officials, but I don't remember.
 8 BY MR. KEYES:
 9 Q. I'm not asking you about confidence
 10 today.
 11 MR. SOBOL: He's not finished.
 12 A. One more second.
 13 BY MR. KEYES:
 14 Q. You're not answering my question.
 15 MR. SOBOL: You're interrupting his
 16 answer.
 17 MR. KEYES: I am, because he said it
 18 before, and he's not answering the question.
 19 BY MR. KEYES:
 20 Q. Do you understand the question?
 21 MR. SOBOL: He understands the
 22 question. If you want to interrupt him,
 23 interrupt him, but he's going to continue the
 24 answer to the question when you finish your

1 interruption.
 2 BY MR. KEYES:
 3 Q. Do you understand my question?
 4 MR. SOBOL: Don't answer that
 5 question. Finish answering the other question
 6 that he asked so he doesn't create a record
 7 which is inaccurate.
 8 A. I was about to wrap up and say while
 9 I'm confident in all the cost allocations that
 10 are made in my report, I don't remember, you
 11 know, which one would have been -- at what stage
 12 the confidence arose.
 13 BY MR. KEYES:
 14 Q. So can you identify for me now which
 15 of the cost categories you are not confident
 16 about based on your review of the expenditure
 17 data such that someone from Compass Lexecon went
 18 out to local officials to get some kind of
 19 confirmation?
 20 MR. SOBOL: Asked and answered four
 21 times.
 22 BY MR. KEYES:
 23 Q. Can you identify those categories?
 24 MR. SOBOL: Asked and answered four

1 times.
 2 A. I'm not sure what I said earlier did
 3 not answer that question.
 4 BY MR. KEYES:
 5 Q. It's a yes-or-no question.
 6 A. If you want me to repeat the answer,
 7 I'm happy to do that.
 8 Q. I don't want you to explain what you
 9 think now and why you're confident now. I'm
 10 trying to understand which ones were so obvious
 11 to you based on your review of the expenditure
 12 data and which ones you said, this is my
 13 judgment, but I'm not certain, we should go
 14 check with the local officials. And I can't get
 15 an answer from you as to which ones those were.
 16 I want to know which ones required
 17 going out to local officials. Can you tell me
 18 which ones those were?
 19 MR. SOBOL: Andrew, I think you're
 20 frustrated because you haven't listened to his
 21 answers. If you'll listen to the answer, you'll
 22 hear the answer to the question in it. He'll
 23 repeat himself, but you're not listening.
 24 A. I want to make clear that every

1 allocation in my report between variable and not
 2 variable costs is ones -- is an allocation that
 3 I'm comfortable with -- more than comfortable
 4 with, I'm confident in. Some of those were such
 5 that it seemed obvious to me as an economist
 6 that a cost category such as a beat cop would be
 7 one that, okay, we're going to make this
 8 variable, and that doesn't need discussion with
 9 the team, that doesn't need any kind of
 10 follow-up at all.
 11 Other cost categories were ones that I
 12 needed more. Police cars are a good example of
 13 that. It seemed to me it's in the capital
 14 budget. So maybe I think capital is fixed, but
 15 on the other hand, cars wear out. The more
 16 driving around police do, the faster they wear
 17 out. It seemed after consideration and
 18 discussion with my team that some of the police
 19 car costs should be put into the variable cost
 20 category. There were others that would have
 21 needed confirmation from local officials. I'm
 22 not sure which those were.
 23 But in the end, I stand by all of my
 24 classifications, and if there's any one you want

1 to question, please bring it up.

2 BY MR. KEYES:

3 Q. Is there any way to reconstruct which

4 cost categories fell into the three buckets you

5 just outlined?

6 MR. SOBOL: Objection.

7 A. My memory would not be probably the

8 best way to do that, but one could attempt to

9 talk to the people involved and do the best you

10 can in a reconstruction.

11 BY MR. KEYES:

12 Q. Is there any other way besides talking

13 to the people at Compass Lexecon to determine

14 which cost categories fell into each of the

15 three budgets you outlined?

16 MR. SOBOL: Objection.

17 A. I can't think of any.

18 BY MR. KEYES:

19 Q. Would you turn to Page 39 of your

20 report. Paragraph 69, you say, "The approaches

21 for other Bellwether divisions generally follow

22 the examples above; however, there are

23 idiosyncrasies within the Bellwether divisions

24 that require modifications of this approach for

1 some divisions and/or years."

2 Do you see that?

3 A. Yes.

4 Q. What are the idiosyncrasies to which

5 you are referring?

6 A. Let me see what this is here.

7 So what I'm doing in the report here

8 is explaining for the reader how this works, and

9 it is -- involves a lot of work with a lot of

10 numbers for divisions. And what I chose to do

11 in the report was to pick out one of the

12 divisions and explain in detail how that

13 decision about affected cost gets determined. I

14 didn't want the reader to think that this is

15 exactly the way it happened in every division.

16 So by idiosyncrasies, it just means it

17 depends on the division how one would kind of

18 make these different determinations. The total

19 cost would be pretty much the same. The costs

20 associated with wages and salaries and benefits,

21 those are common to all the divisions.

22 Then the overhead adjustment, that's

23 where differences creep in. There are

24 idiosyncrasies with respect to the nature of

1 overhead adjustment in each of the divisions.

2 Q. Are there -- you referred to

3 idiosyncrasies in terms of your overhead

4 adjustment. Are you referring to any other

5 idiosyncrasies?

6 A. Well, given 1, 2 and 3, where

7 idiosyncrasies come in within the terms of 3,

8 then 4 follows. That's just a multiplication.

9 More idiosyncrasies come in on the affected

10 non-compensation costs. Some divisions, for

11 example, contract out for services. Most don't.

12 And so those contracting out for services need

13 to be considered as part of a variable cost, and

14 a determination is made.

15 But it's not the same cookie-cutter

16 division by division. It depends on what they

17 do. It depends on what they spend their money

18 on. Then we got affected non-compensation costs

19 offset to affected compensation costs. This

20 offset could be a governmental transfer, for

21 example, that's division-specific, so that's

22 another source of idiosyncrasy. And the same

23 with non-compensation costs.

24 So I don't know, you have to -- this

1 was a description of the steps, but the actual

2 application of those in each division varied

3 somewhat.

4 Q. Did you write this report?

5 A. Yes, I did.

6 Q. You actually drafted the language?

7 A. Yes.

8 Q. Would you turn to Paragraph 65.

9 That's on Page 37. And you discussed the

10 overhead adjustment factor.

11 A. Yes.

12 Q. You say that you identified the

13 "personnel involved in activities that are

14 unlikely to be related to providing services

15 that are affected by opioids."

16 Do you see that?

17 A. Yes.

18 Q. Okay. And are you able to tell me

19 anything more than what you've already said

20 about how you went about identifying those

21 personnel for purposes of calculating your

22 overhead adjustment factor?

23 MR. SOBOL: Objection.

24 A. Well, beyond the statement that it's a

1 division-by-division decision and allocation of
 2 particular job titles into those two different
 3 categories which depends on the division.
 4 BY MR. KEYES:
 5 Q. Once you thought you had identified
 6 the personnel who were involved in activities
 7 unlikely to be related to providing services
 8 that are affected by opioids, did you take any
 9 steps to validate your identification to confirm
 10 you got it right?
 11 A. Well, in the case of that decision,
 12 suppose I take a police chief and say, chief,
 13 you're not -- we have to keep you around anyway,
 14 and you're not variable with respect to demands
 15 on opioids. If I'm right, I'm right. If I'm
 16 wrong, I'm being conservative.
 17 So by the nature of this allocation,
 18 it's being at least conservative. So even if
 19 there were some variable costs in that cost
 20 category, as long as I'm not counting them, then
 21 I'm being conservative in the report.
 22 Q. You just explained to me why you think
 23 you were being conservative. That wasn't my
 24 question.

1 My question was, what steps did you
 2 take to investigate and confirm that you got it
 3 right when you identified people who you thought
 4 were involved in activities unlikely to be
 5 related to providing services affected by
 6 opioids?
 7 MR. SOBOL: Objection. Asked and
 8 answered.
 9 A. This is really an example of the kind
 10 of question we went around and around on a bit
 11 ago. This is a classification issue. Do they
 12 belong over here? Do they belong over there?
 13 And the way I answered that question
 14 was saying that on the basis of my kind of
 15 experience and training as an economist, I felt
 16 confident in some. Some needed team
 17 discussions, some needed beyond that, maybe
 18 there's something the local officials can help
 19 with. I don't remember which of these
 20 allocations fell into where in that process each
 21 of those allocations worked themselves out.
 22 BY MR. KEYES:
 23 Q. When you identified what you consider
 24 to be affected non-compensation costs, what

1 steps did you take to investigate or test your
 2 belief that those affected non-compensation
 3 costs, in fact, varied with the level of
 4 services affected by opioids?
 5 A. Well, this is another version of the
 6 same question. This is putting things into this
 7 bucket or that bucket. Some lab supplies, say,
 8 seemed that they would vary in proportion to the
 9 number of autopsies performed, so that seemed
 10 like an easy one to me. Others would have
 11 required team discussion. Others would have
 12 benefited by confirmation.
 13 Q. So again, you've got the three buckets
 14 of obvious to you, call for team discussion, and
 15 required confirmation from local officials.
 16 MR. SOBOL: Objection.
 17 BY MR. KEYES:
 18 Q. Right?
 19 MR. SOBOL: Objection.
 20 A. Well, I'm really describing a process
 21 here.
 22 BY MR. KEYES:
 23 Q. As part of your process, though, these
 24 affected non-compensation costs fell into one of

1 these three buckets? Bucket is my word, but
 2 you're dividing them into three groups?
 3 A. I'm describing a three-step process.
 4 The bucket analogy or metaphor is kind of
 5 oversimplification and would seem to indicate
 6 that there's a bright line between this bucket,
 7 that bucket, and that bucket. And these are --
 8 it's a process.
 9 Q. But can you tell me which of those
 10 affected non-compensation costs you sought
 11 confirmation for?
 12 MR. SOBOL: Objection.
 13 A. Well, this is another version of the
 14 question I talked about earlier, and in this
 15 process of making a determination of in that
 16 bucket or this bucket, some I felt confident I
 17 could make on my own, some were discussion, more
 18 discussion, some would have involved checking.
 19 I can't tell you sitting here which of those --
 20 where they fell out in that process into being
 21 put into one bucket or the other.
 22 BY MR. KEYES:
 23 Q. Once you identified what you
 24 considered to be the affected divisions, and

1 then for each affected division the affected
 2 costs, you then attempted to estimate the
 3 damages -- what you call damages incurred by
 4 those affected divisions as a result of
 5 defendants' misconduct, correct?
 6 A. That's right.
 7 Q. And for that you say you rely on the
 8 analyses and opinions presented in the Cutler
 9 report?
 10 A. That's correct.
 11 Q. So you used the percentages that were
 12 derived by Professor Cutler, correct?
 13 A. That's correct.
 14 Q. And is it your understanding that
 15 Professor Cutler calculated these percentages
 16 using regression analyses?
 17 A. Yes, he did.
 18 Q. Did you replicate Professor Cutler's
 19 regression analyses?
 20 A. I didn't conduct my own regression
 21 analysis, no.
 22 Q. Did you test Professor Cutler's
 23 regression analyses?
 24 A. Well, they -- I tested them in the

1 sense of seeing whether I thought they were
 2 reasonable, but I didn't conduct any statistical
 3 tests on them.
 4 Q. Did you validate his regression
 5 analyses in any way?
 6 MR. SOBOL: Objection.
 7 A. What -- can you explain what you mean
 8 by "validate"?
 9 BY MR. KEYES:
 10 Q. Yes, confirm that the estimates that
 11 he arrived at using his regression analyses are
 12 correct.
 13 A. Well, I was familiar enough with the
 14 process to know he was doing it correctly.
 15 Q. Did you do your own analysis to
 16 attempt to replicate, test, or validate his
 17 results?
 18 MR. SOBOL: Objection. Asked and
 19 answered.
 20 A. I didn't replicate his statistics. I
 21 did tests in the sense of asking myself, do
 22 these seem reasonable, which they do. And then
 23 validate, I was aware of his methods and thought
 24 they were valid methods.

1 BY MR. KEYES:
 2 Q. Do you have the expertise to replicate
 3 the regression analyses that Professor Cutler
 4 performed?
 5 MR. SOBOL: Objection. Asked and
 6 answered.
 7 A. Well, the hard part of what Cutler did
 8 is not writing a one-line Stata code given the
 9 specification to come up with his estimates, and
 10 I certainly do have -- I could run one line of
 11 Stata code. The hard part of what Professor
 12 Cutler did is finding the right data,
 13 determining the right specification, in some
 14 cases interpreting correctly. That -- he's
 15 better than me for that kind of stuff.
 16 BY MR. KEYES:
 17 Q. If Professor Cutler's percentages are
 18 wrong, that would have a direct negative impact
 19 on your calculations, correct?
 20 MR. SOBOL: Objection.
 21 A. Depends on what direction they're
 22 wrong, unless I'm misunderstanding what you mean
 23 by "negative."
 24 BY MR. KEYES:

1 Q. Well, if his percentages are too
 2 high --
 3 A. Okay.
 4 Q. -- what impact does that have on your
 5 calculations?
 6 A. His percentages attribute -- I'm
 7 trying to make sure I understand here --
 8 attribute too high a percentage to defendants'
 9 misconduct. Then since it's a proportional
 10 analysis that I do using those numbers, if his
 11 numbers fall in some proportion, my damages
 12 numbers would fall in the same proportion.
 13 Q. Does Professor Cutler rely on the work
 14 of Professor Rosenthal?
 15 A. Yes, he does.
 16 Q. What is your understanding of what
 17 Professor Rosenthal did?
 18 A. Professor Rosenthal investigated the
 19 empirical connection between a certain kind of
 20 marketing by defendant manufacturers and
 21 shipments at the national level, shipments of
 22 prescription opioids.
 23 Q. Did Professor Cutler, to your
 24 knowledge, replicate Professor Rosenthal's

1 regression analyses?

2 MR. SOBOL: Scope. Objection, scope.

3 A. Not to my knowledge.

4 BY MR. KEYES:

5 Q. Okay. Are you aware of anything that

6 Professor Cutler did to test or validate

7 Professor Rosenthal's work?

8 A. Well, I think his role with respect to

9 Professor Rosenthal would have been a little bit

10 like my role with respect to him. Did it make

11 sense to him?

12 And so before I go on, I shouldn't

13 answer from his kind of subjective perspective,

14 so this -- maybe that's a question for Dave and

15 not for Tom.

16 Q. If Professor Rosenthal's work has

17 flaws, does that have an impact on

18 Professor Cutler's work?

19 MR. SOBOL: Objection. Scope.

20 A. I think it depends on what you're

21 talking about in terms of what flaws you might

22 mean.

23 BY MR. KEYES:

24 Q. Well, if Professor Rosenthal's

1 percentages are wrong, that has an impact on

2 Professor Cutler's work, correct?

3 A. Well, there's, again, a proportional

4 mathematical relationship between shares that

5 Professor Rosenthal estimates and shares that

6 David then provides to me. So mathematically,

7 if Meredith -- Professor Rosenthal's shares are

8 too low, for example, and more of the shipments

9 are attributable to defendants' misconduct, that

10 would raise David's estimated shares of my

11 costs.

12 Q. And the opposite would be true as

13 well?

14 A. And the opposite would be true as

15 well.

16 Q. For your work in your damages report,

17 do you rely at all on Professor Gruber's work?

18 A. Well, you know, broadly, some of the

19 things that Professor Gruber says in his report

20 are consistent with the analyses of both

21 Professor Cutler and Rosenthal, so my numbers

22 come from Rosenthal-Cutler.

23 My understanding and the

24 reasonableness of my conclusions are confirmed

1 by Professor Gruber's work.

2 Q. Do any of the percentages you use come

3 from Professor Gruber's work?

4 A. No, the percentages don't.

5 Q. Do all the percentages that you use in

6 your work come from Professor Cutler?

7 A. I believe that's correct, yes, for the

8 damages.

9 Q. Did Professor Cutler's analysis focus

10 only on data from Summit County and Cuyahoga

11 County?

12 MR. SOBOL: Objection.

13 A. No, it didn't.

14 BY MR. KEYES:

15 Q. Okay. Did he perform his calculations

16 based on national averages?

17 MR. SOBOL: Objection.

18 A. I believe most of his empirical

19 analysis was a subset of counties which were, I

20 think, designated large counties, several

21 hundred of these that were about the same size

22 as the bellwether county.

23 BY MR. KEYES:

24 Q. Several hundred counties across the

1 country?

2 A. Yes.

3 Q. Which Professor Cutler deemed to be of

4 roughly the same size at Cuyahoga or Summit

5 Counties?

6 MR. SOBOL: Objection.

7 A. My understanding is not that they were

8 the same size, but they were large. They would

9 fit into a category of large, which meant a

10 minimum size.

11 BY MR. KEYES:

12 Q. And what was the threshold for being

13 large, as you understand it?

14 MR. SOBOL: Objection.

15 A. I don't remember.

16 BY MR. KEYES:

17 Q. And did you do any comparison of the

18 data specific to Cuyahoga County or Summit

19 County versus the data for these several hundred

20 large counties that were part of

21 Professor Cutler's analysis?

22 MR. SOBOL: Objection.

23 A. I'm not sure what you're asking.

24 BY MR. KEYES:

1 Q. Well, I asked you whether -- you use
 2 Professor Cutler's percentages.
 3 A. That's correct.
 4 Q. Professor Cutler's percentages are the
 5 result of his regression analyses, right?
 6 A. That's one of the things that fed into
 7 it, yes.
 8 Q. The inputs for his regression analyses
 9 are data for what you describe as several
 10 hundred large counties around the country,
 11 correct?
 12 MR. SOBOL: Objection.
 13 A. That's my understanding of what he
 14 used for his regressions.
 15 BY MR. KEYES:
 16 Q. And so I'm asking you whether you, in
 17 connection with your work in this engagement,
 18 did any comparison of the data for these several
 19 hundred large counties, as you describe it,
 20 versus the data specific to Summit County or
 21 Cuyahoga County.
 22 A. What would be the example of what
 23 you're trying to get at?
 24 Q. I don't want to limit it to anything.

1 I mean, for any of the data sets that
 2 Professor Cutler drew on that you say came from
 3 several hundred large counties around the
 4 country, did you compare that data set to an
 5 equivalent data set that was specific to Summit
 6 County or Cuyahoga County?
 7 MR. SOBOL: Objection.
 8 A. Well, my report wasn't sort of
 9 empirical at that level, so I think I would say
 10 I didn't do it.
 11 BY MR. KEYES:
 12 Q. You prepare your calculations for the
 13 period 2006 through 2018?
 14 A. That's correct.
 15 Q. Okay. Why that time period?
 16 A. That was my assignment.
 17 Q. Your assignment from whom?
 18 A. From counsel.
 19 Q. Which counsel?
 20 A. There's a bunch of them.
 21 Q. Well, who gave you that specific
 22 instruction?
 23 A. It was a team. I don't remember which
 24 group in particular.

1 Q. Do you remember any of the names?
 2 A. David Ko, Tom Sobol, Joe Rice, Ann
 3 Ritter, Derek Loeser.
 4 Q. Anyone else?
 5 A. I'm probably forgetting people, but
 6 that's all I can remember right now.
 7 Q. And do you have an understanding as to
 8 the rationale for picking that period, 2006
 9 through 2018?
 10 MR. SOBOL: That's a yes or no
 11 question.
 12 THE WITNESS: Sorry, I didn't hear the
 13 objection.
 14 MR. SOBOL: It's a yes or a no
 15 question.
 16 A. No.
 17 BY MR. KEYES:
 18 Q. Have you done any analysis as part of
 19 your engagement to determine whether 2006
 20 through 2018 is the appropriate time period for
 21 measuring damages?
 22 MR. SOBOL: Objection.
 23 A. No, I didn't do that. I didn't
 24 undertake that analysis.

1 BY MR. KEYES:
 2 Q. In Appendix IV.B, which is the
 3 Materials Considered, you list a few data sets.
 4 A. Is there a page you've got me looking
 5 at here?
 6 Q. Well, it's IV.B, and it follows your
 7 CV.
 8 MR. SOBOL: Page 6 of the Materials
 9 Considered, is that what you're turning to?
 10 MR. KEYES: Well, I'm calling his
 11 attention to IV.B first.
 12 A. I'm in IV.B.
 13 BY MR. KEYES:
 14 Q. Then there are several categories, and
 15 one category are data sources?
 16 A. Okay.
 17 Q. Are you there?
 18 A. Yes.
 19 Q. Okay. ARCOS data. Do you see that?
 20 A. Yes.
 21 Q. What is ARCOS data?
 22 A. That's a county level shipments data
 23 set.
 24 Q. And who maintains the ARCOS data?

1 A. It's a government function. I can't
 2 remember what level of government.
 3 Q. Do you remember what government branch
 4 or agency maintains the ARCOS data?
 5 A. I can't remember.
 6 Q. Did you look at the ARCOS data as part
 7 of your damages engagement here?
 8 A. Yes.
 9 Q. What ARCOS data did you look at?
 10 A. These would have been shipment
 11 summaries.
 12 Q. Okay. And how did you receive those
 13 shipment summaries?
 14 A. They would have been in tables and
 15 figures.
 16 Q. Provided by whom?
 17 A. Provided by staff at Compass Lex, or
 18 perhaps Greylock McKinnon.
 19 Q. Did you request the ARCOS data?
 20 A. It had been requested, so wherever the
 21 original request came, it wasn't from me.
 22 Q. What do you mean "it had been
 23 requested"?
 24 A. Some member of the economic team

1 requested the data. I'm not sure who.
 2 Q. When you refer to the economic team,
 3 who are you referring to?
 4 A. The other economic experts in this
 5 case.
 6 Q. Referring to Professor Rosenthal,
 7 Professor Cutler, Professor Gruber?
 8 A. Yes.
 9 Q. Did you request the ARCOS data?
 10 A. I didn't request it personally.
 11 Q. Okay. And did you sign a protective
 12 order regarding access to and use of ARCOS data?
 13 A. I signed a protective order. I don't
 14 remember signing one with respect to this data
 15 alone.
 16 Q. You don't remember signing a
 17 protective order specific to ARCOS data?
 18 A. I don't remember.
 19 Q. And was the ARCOS data relevant to
 20 your quantification of damages?
 21 A. Yes.
 22 Q. How so?
 23 A. Well, this was the main subject of
 24 Professor Cutler's analysis, and it was very

1 relevant, how the data turned out and the
 2 results turn out for my damages calculation.
 3 Q. Did you use the ARCOS data in your own
 4 calculations?
 5 A. I used them in the sense of the
 6 results that Professor Cutler obtained from
 7 using the ARCOS data.
 8 Q. Okay. So you're saying the ARCOS data
 9 may have been relevant to Professor Cutler's
 10 work and the calculations he arrived at,
 11 correct?
 12 A. That's -- yes, that's correct.
 13 Q. Separate from Professor Cutler's
 14 calculations, was the ARCOS data relevant to
 15 the -- did you use the ARCOS data in your work
 16 in this engagement?
 17 A. I don't think I used it in any way
 18 independent of Professor Cutler's analysis.
 19 Q. You also referenced BLS data?
 20 A. Yes.
 21 Q. What's BLS?
 22 A. That's Bureau of Labor Statistics.
 23 Q. Did you request the BLS data, or was
 24 that something requested by someone else on the

1 economic team?
 2 A. That would have been requested by
 3 someone else on the economic team.
 4 Q. Did you review the BLS data?
 5 A. By "review," do you mean look at the
 6 data?
 7 Q. Did you look at it?
 8 A. I looked at some tables from the BLS
 9 data.
 10 Q. And did you use the BLS data in your
 11 work on the damages engagement, separate and
 12 apart from relying on Professor Cutler's
 13 percentages?
 14 A. I think I understand the question.
 15 This was used by David Cutler who
 16 contributed percentages to me, but I didn't do
 17 any independent analysis of the BLS data.
 18 Q. Okay. There are a number of other
 19 data sources listed here, and we can go through
 20 them one by one, but is the same true for each
 21 of these other data sources --
 22 MR. SOBOL: Objection.
 23 BY MR. KEYES:
 24 Q. -- that it was requested by someone on

1 the economic team, not by you, that it may have
 2 been used by Professor Cutler, but separate from
 3 what Professor Cutler did to arrive at
 4 percentages that you used, you otherwise did not
 5 use the data in your work to quantify damages?
 6 MR. SOBOL: Objection.
 7 A. I'm looking. I'd have to go back and
 8 confirm where the crime -- how the crime data
 9 plays in here.
 10 BY MR. KEYES:
 11 Q. The FBI crime data?
 12 A. The FBI crime data.
 13 Q. Sitting here today, do you know how
 14 the FBI crime data is relevant to the work you
 15 did separate and apart from relying on
 16 Professor Cutler's percentages?
 17 A. I don't want to say the wrong thing.
 18 I would have to go back and check and see how
 19 the crime accounting was done to be sure.
 20 Q. Okay. So you don't know as to the FBI
 21 crime data.
 22 How about the other categories?
 23 MR. SOBOL: Objection.
 24 BY MR. KEYES:

1 Q. Did you actually use the data in any
 2 of these other categories that are listed
 3 separate and apart from whether they were used
 4 by Professor Cutler to arrive at the statistics
 5 and the percentages that you used?
 6 A. I would have to go back and check and
 7 see about the census data, and even the multiple
 8 causes of death data. This would require a
 9 little bit of homework or time --
 10 Q. Okay.
 11 A. -- going back here today.
 12 Q. Well, looking at this list of data
 13 sources, can you identify for me any of the data
 14 that you used in your work separate and apart
 15 from whether Professor Cutler used it to arrive
 16 at percentages that you then used?
 17 A. I understand the question.
 18 And for a couple of these, I have to
 19 go back and check to be sure.
 20 Q. Okay. And you've identified those.
 21 A. Yes.
 22 Q. What about the other ones?
 23 A. I don't think so.
 24 Q. You don't think you used them?

1 A. I don't think I used them, except for
 2 having been used by other -- one of the other
 3 economists.
 4 Q. Did you sign any data use agreement
 5 with the National Center for Health Statistics?
 6 A. I don't think so, no.
 7 Q. Okay. Did you sign any data use
 8 agreement with the Pacific Institute for
 9 Research and Evaluation?
 10 A. I don't think so.
 11 Q. Did you sign any data use agreement
 12 with any other organization in connection with
 13 your work on this engagement?
 14 A. I can't think of any.
 15 Q. You list on the prior page, Page 5 of
 16 Appendix IV.B, Deposition Transcripts.
 17 Do you see those?
 18 A. Yes.
 19 Q. Are those the only deposition
 20 transcripts you considered?
 21 A. I can't think of any others.
 22 Q. Okay. And for -- you list six
 23 deposition transcripts here, correct?
 24 A. That's right.

1 Q. Did you read all of them?
 2 A. Well, I read some of all of them. I
 3 didn't read all of all of them.
 4 Q. Okay. So you read -- did you read any
 5 of these deposition transcripts in its entirety?
 6 MR. SOBOL: Objection. Asked and
 7 answered.
 8 A. I -- well, some of them I may have
 9 more like flipped through and seen all the
 10 pages, but I don't claim to have read any of
 11 them word for word.
 12 BY MR. KEYES:
 13 Q. When you skimmed through them, how did
 14 you determine what portions to read or skim or
 15 not read or skim at all?
 16 A. This is another one of those processes
 17 in which in this case the enterprise was I was
 18 interested in certain, in this case, evidence
 19 from deposition of local officials, and the
 20 primary thing I remember is I'm interested in
 21 evidence that the opioid crisis has affected the
 22 spending in these divisions in some way that may
 23 have moved funds over in one direction from
 24 another. And what I would have done is say, and

1 asked my staff, here are depositions of people
 2 who might know about that, would you please go
 3 through these depositions and see if there's
 4 some indication that there's evidence for that.
 5 Q. So did your staff give you summaries
 6 or --
 7 MR. SOBOL: He hasn't finished.
 8 A. The process isn't quite over.
 9 So they would have flagged certain
 10 parts of the deposition, and then I would go
 11 back and confirm that that was actually what was
 12 being said, my interpretation of what was being
 13 said, and then I'd read around that to make sure
 14 there wasn't some context I was missing, and
 15 then I maybe took a quick look at the rest of
 16 the deposition.
 17 BY MR. KEYES:
 18 Q. Did anyone on your so-called team
 19 prepare any summaries of the deposition
 20 testimony?
 21 A. Not so far as I know.
 22 Q. Did you intend to read all of the
 23 deposition transcripts in the case?
 24 MR. SOBOL: Objection.

1 A. I never intended to read all the
 2 depositions, no.
 3 BY MR. KEYES:
 4 Q. Did you intend to read all the
 5 deposition testimony in the case about whether
 6 there was evidence that the opioid crisis
 7 affected the spending of particular divisions?
 8 A. I think "all" would be an
 9 overstatement. I was looking for sufficient
 10 evidence to back up my report, and at this point
 11 I thought that was sufficient.
 12 Q. So who identified these six deposition
 13 transcripts as being transcripts, at least
 14 portions of which you should read for your work
 15 in this case?
 16 A. This would have been me saying, I'm
 17 interested in testimony of local officials,
 18 either in budget documents or something else, or
 19 in deposition, that indicates money has been
 20 moved as a result of opioid crisis. So it would
 21 have been that level of that's what I would like
 22 to see. And then staff made a determination of
 23 who among the deponents maybe has something to
 24 say about that, and then they would read those

1 depositions.
 2 Q. And when you said "I'm interested in
 3 the testimony of local officials either in
 4 budget documents or something else, or in
 5 deposition, that indicates money has been moved
 6 as a result of the opioid crisis," to whom did
 7 you say that?
 8 A. That would have been a team-type
 9 statement.
 10 Q. The economic team?
 11 A. No, it wasn't to --
 12 Q. Compass Lexecon team?
 13 A. This would have been to Compass
 14 Lexecon.
 15 Q. And what steps did you take to make
 16 sure that they got their hands on all the
 17 deposition testimony that met your parameters?
 18 A. As I explained, I didn't feel it
 19 necessary to be exhaustive with respect to the
 20 deposition of officials who may have said
 21 something about this. I gave them that general
 22 direction. This came back a pretty substantial
 23 list that included backup for me that I felt
 24 like, okay, check, I have evidence from local

1 officials that this diversion is taking place.
 2 Q. Who does Donna Skoda work for?
 3 A. Donna Skoda.
 4 Q. Does she work for Summit County?
 5 A. I would have a 50/50 chance of getting
 6 this right. I'm sorry if I don't remember.
 7 Q. Does she work for Cuyahoga County?
 8 A. Same chance.
 9 Q. Does she work for someone besides
 10 Summit County or Cuyahoga County?
 11 A. I don't remember who she worked for.
 12 Q. Do you remember what her title is?
 13 A. I think she's a budget person, but
 14 I'm, again, just trying to recollect as best I
 15 can.
 16 Q. Do you remember what division she
 17 works for?
 18 A. I don't remember.
 19 Q. Gary Gingell, who does he work for?
 20 A. I don't remember.
 21 Q. Summit County?
 22 A. I don't remember.
 23 Q. Cuyahoga County?
 24 A. I don't remember.

1 Q. Someone other than Summit County or
2 Cuyahoga County?

3 A. I don't remember.

4 Q. Do you know his title?

5 A. I am afraid I don't.

6 Q. Do you know what division he worked
7 for?

8 MR. SOBOL: Objection.

9 A. I'm afraid I don't.

10 BY MR. KEYES:

11 Q. Is the same true for Greta Johnson?

12 MR. SOBOL: Objection.

13 What's the question?

14 BY MR. KEYES:

15 Q. That you don't know who she works for?

16 MR. SOBOL: Go ahead.

17 A. I don't remember Greta Johnson, or
18 where she would have worked.

19 BY MR. KEYES:

20 Q. Do you know what her title was?

21 MR. SOBOL: Objection. Asked and
22 answered.

23 A. I don't remember what her title is.

24 BY MR. KEYES:

1 Q. Or what division she worked for?

2 MR. SOBOL: Objection. Asked and
3 answered.

4 A. I don't remember that.

5 BY MR. KEYES:

6 Q. Okay. How about Jackie Pollard, who
7 did she work for?

8 A. I don't remember.

9 Q. What was her title?

10 MR. SOBOL: Objection. Asked and
11 answered.

12 A. I don't -- I don't -- sorry, I don't
13 remember.

14 BY MR. KEYES:

15 Q. What division did she work for?

16 MR. SOBOL: Objection. Asked and
17 answered.

18 A. I don't remember.

19 BY MR. KEYES:

20 Q. Margaret Keenan, who did she work for?

21 A. I don't remember.

22 Q. What was her title?

23 MR. SOBOL: Objection. Asked and
24 answered.

1 A. I don't remember.

2 BY MR. KEYES:

3 Q. What division did she work for?

4 MR. SOBOL: Objection. Asked and
5 answered.

6 A. I don't remember.

7 BY MR. KEYES:

8 Q. Molly Leckler, who did she work for?

9 A. I think she's a substance abuse
10 person.

11 Q. For?

12 A. She was talking about drug courts, if
13 I remember her deposition testimony.

14 Q. Did she work for Summit County or
15 Cuyahoga County, or other?

16 A. I don't remember which county she
17 would have worked for, sorry.

18 Q. Do you remember her title?

19 A. I don't remember her title.

20 Q. If other people not listed here had
21 testified about whether the opioid crisis
22 affected their division's spending, is that
23 something you would have wanted to see?

24 MR. SOBOL: Objection. Asked and

1 answered.

2 A. Well, not necessarily.

3 BY MR. KEYES:

4 Q. Why not?

5 A. I think in --

6 MR. SOBOL: Well, objection. Asked
7 and answered.

8 A. In many situations, one needs
9 sufficient information to make a determination.
10 It doesn't mean you need all possible
11 information to make a determination. And in my
12 judgment, looking through these six depositions
13 gave me sufficient confidence that the approach
14 saying that funds were diverted from other uses
15 to the opioid crisis was a valid and reliable
16 method.

17 BY MR. KEYES:

18 Q. Which of these six people, if any,
19 worked for the Office of Medical Examiner?

20 A. I don't remember.

21 Q. Okay. If none of them worked for the
22 Office of Medical Examiner, but others who did
23 work for the Office of Medical Examiner were
24 deposed about this very topic, would you want to

1 see their testimony?

2 A. Well, it's the same question I just

3 answered. This set of deponents gave me

4 sufficient confidence that I was approaching it

5 in the right way.

6 Q. What if personnel from the Office of

7 Medical Examiner said they couldn't identify any

8 variable costs, would that be relevant to your

9 work?

10 A. Oftentimes real world people use terms

11 differently than economists use them, so it

12 depends, I would say.

13 Q. What if people who worked for the

14 Office of Medical Examiner testified "I can't

15 think of a single expense we had that changed

16 because of the opioid crisis," would that be

17 relevant to your work --

18 MR. SOBOL: Objection.

19 BY MR. KEYES:

20 Q. -- to know that they said that?

21 MR. SOBOL: Objection.

22 A. It might be relevant. I would have

23 to -- I wouldn't necessarily conclude that

24 there's no variable costs.

1 BY MR. KEYES:

2 Q. Because you think you might be right

3 and they might be wrong?

4 MR. SOBOL: Objection.

5 A. I'm approaching the question in a

6 particular way, and I would have to really know

7 the context of how the person -- what the person

8 was asked, how they might see the world, and

9 then try to understand their answer.

10 BY MR. KEYES:

11 Q. When you gave directions to the

12 Compass Lexecon team to go get confirmation

13 either which divisions you thought were affected

14 or which costs you thought were affected, did

15 you tell them to only go talk to people who had

16 been deposed in the case?

17 A. No. This was a very general interest

18 of mine that I articulated early, and it was

19 something I was on the lookout for.

20 Q. Did Compass Lexecon team talk to

21 people who were not deposed in the case?

22 MR. SOBOL: Objection. Asked and

23 answered.

24 A. They would have talked to some of the

1 local officials we talked about earlier.

2 BY MR. KEYES:

3 Q. You only identified by broad category,

4 you don't remember the names. So I'm trying to

5 figure out, even if you don't remember their

6 names, do you know whether Compass Lexecon

7 talked to people who worked for Summit County or

8 Cuyahoga County who were not deposed in this

9 case?

10 A. I am not sure. Those are two

11 different lists. Whether their list was

12 deposed, I really can't tell you one way or the

13 other.

14 Q. There's a discussion in your report

15 starting on Page 23. It's the section titled

16 "Municipal Governments Have Been Impacted by the

17 Opioid Epidemic: Examples from Bellwether

18 Governments."

19 Do you see that?

20 A. Yes.

21 Q. Starts on 23 and goes through 28.

22 Do you see that?

23 A. Yes, I do.

24 Q. And so this discussion on Pages 23

1 through 28 is based on what you've read,

2 correct?

3 A. Well, so far there are references to

4 things I would have read. It looks like

5 their -- all the backup here is to written

6 material, yes.

7 Q. Okay.

8 A. Excuse me. Pardon me. There's a

9 deposition of Molly Leckler here. See if I got

10 it right with respect -- yes, drug court, Molly

11 Leckler.

12 Q. So the discussion on Pages 23

13 through 28 is based on what you've read?

14 A. Including the deposition testimony,

15 yes.

16 Q. Okay. Is it accurate to say that this

17 discussion on these pages is not based on any

18 firsthand experience of yours?

19 A. "Firsthand experience," what do you

20 mean by that?

21 Q. I mean, you are describing what you

22 read, not what you experienced yourself, you

23 didn't see it yourself, you didn't live it

24 yourself.

1 A. You mean, do I have any firsthand
2 experience with drug abuse? Is that what you're
3 asking?
4 Q. No. I'm asking you, the stuff that
5 you've included in here is stuff you've read.
6 A. We already established that.
7 Q. It's not based on what you
8 experienced, it's not based on something you
9 studied yourself, these are not studies that you
10 conducted, correct?
11 MR. SOBOL: Objection.
12 I think you just asked about four
13 questions in a row, so I think you should
14 reframe the question so we make sure it's clear
15 what question he's answering.
16 BY MR. KEYES:
17 Q. Let's take them one step at a time.
18 The material on Pages 23 through 28,
19 this is not describing any studies you've
20 conducted, correct?
21 A. These are studies that I and my team
22 identified that would make the point that
23 municipal governments have been affected.
24 Q. So it is not material that you have

1 studied yourself? These are not studies you
2 conducted yourself?
3 A. It says what they are. Counsel of
4 Economic Advisors, I did not do that study. As
5 part of my professional work, I study the
6 studies.
7 Q. You didn't conduct any of the studies
8 that are referenced on these pages, correct?
9 A. I didn't conduct any studies here.
10 Q. And you didn't personally calculate
11 any of the statistics that are reported on these
12 pages, correct?
13 MR. SOBOL: Objection.
14 A. Oh, gosh, did I? I think these are --
15 it's a review of relevant studies. I didn't
16 conduct any new empirical analysis of any of the
17 things that are reported here in this section.
18 BY MR. KEYES:
19 Q. Did you test or validate any of the
20 numbers or statistics that are in this section?
21 MR. SOBOL: Objection.
22 A. At some place in my report or in this
23 section you're talking about?
24 BY MR. KEYES:

1 Q. I'm talking about the discussion on
2 Pages 23 through 28.
3 A. As a self-contained unit, it doesn't
4 count. Validation might have done elsewhere in
5 the report.
6 Q. Did you test or validate any of the
7 numbers or statistics in this section?
8 A. The question is still ambiguous, but
9 I'll try to answer it.
10 I didn't do any validation within this
11 section of the material noted in this section.
12 Q. Do you think you validated it
13 elsewhere in your report?
14 A. I do.
15 Q. Where do you think you validated it
16 elsewhere?
17 A. This would be in my public nuisance
18 report.
19 Q. So you're switching reports.
20 I'm talking about this report, damages
21 report. Did you validate it anywhere in this
22 report?
23 MR. SOBOL: Asked and answered.
24 BY MR. KEYES:

1 Q. I want to make sure the record is
2 clear. Your answer is no?
3 MR. SOBOL: Objection.
4 To what?
5 A. Well, let me state what I think is the
6 issue here.
7 Of the studies that are mentioned in
8 this section of my report, I did not in this
9 section of this report conduct any validation of
10 those studies.
11 BY MR. KEYES:
12 Q. Nor did you conduct any validation of
13 those studies elsewhere in your damages report,
14 correct?
15 A. I think that's correct, although I did
16 get around to it in another context.
17 Q. There are some references in your
18 report and in the appendices to a crime-focused
19 adjustment.
20 Do you recall the crime-focused
21 adjustment?
22 A. Yes, I do.
23 Q. What is the crime-focused adjustment?
24 A. Well, this was an approach to

1 recognizing that police do things other than
 2 deal with criminals. They direct traffic, for
 3 example, and I wanted to make a cut at not
 4 attributing to opioids variable costs associated
 5 with police that might be not likely to be
 6 affected by opioids.

7 Q. So do you know which, sitting here
 8 right now, which divisions you used a
 9 crime-focused adjustment on?

10 A. I think it primarily would have been
 11 the law enforcement. I have to go back and
 12 check to see if it applied to anything else.

13 Q. Okay. I believe you used it for the
 14 office of prosecutor. Why?

15 A. Well, for the same reason. There are
 16 different types of crimes, and some may not be
 17 affected by opioids.

18 Q. And how did you determine what
 19 percentage to use for your crime-focused
 20 adjustment for the Office of Prosecutor? Not
 21 necessarily the numbers, but what was your
 22 method?

23 A. This would have been looking at the
 24 underlying documents. Probably it would have

1 required a discussion with the team on this one
 2 to make a determination of what goes where.

3 Q. Was that also a subject of follow-up
 4 by the Compass Lexecon team with any officials
 5 who worked for Summit County or Cuyahoga County?

6 A. I'm not sure about that.

7 Q. I believe you also used a
 8 crime-focused adjustment for the Court of Common
 9 Pleas.

10 Does that sound right to you?

11 A. That seems right to me.

12 Q. Why did you use a crime-focused
 13 adjustment for the Court of Common Pleas?

14 A. Because I think that division handles
 15 things that wouldn't be affected by the opioid
 16 crisis.

17 Q. Such as?

18 A. I didn't want to count them.

19 I'm not sure what the category would
 20 be.

21 Q. Did you take the same approach in
 22 trying to arrive at a crime-focused adjustment
 23 for the Court of Common Pleas as you did for
 24 Office of Prosecutor, which is you used your

1 best judgment based on your review of the cost
 2 categories? Then there was a team discussion,
 3 and in some instances there was follow-up with
 4 local officials?

5 A. Yeah, the general --

6 MR. SOBOL: Objection to the form of
 7 the question.

8 A. The general methodology would have
 9 been the same.

10 BY MR. KEYES:

11 Q. I believe you also used a
 12 crime-focused adjustment for the sheriff's
 13 office. Does that seem right to you?

14 A. It does seem right.

15 Q. Why?

16 A. For the same reason.

17 Q. And did you follow the same
 18 methodology?

19 A. The same general process, yes.

20 Q. You say on Page 20 of your report at
 21 Paragraph 35, "On instruction from counsel, I
 22 deduct as an offset any revenue received from
 23 other governments, or any other external
 24 sources, that was provided for the sole purpose

1 of funding opioid-specific activities, to arrive
 2 at cost to the Bellwether governments net of
 3 outside contributions."

4 Do you see that?

5 A. Yes.

6 Q. Which counsel gave you that
 7 instruction?

8 A. I don't remember.

9 Q. What is your understanding of the
 10 rationale for that instruction?

11 MR. SOBOL: Objection.

12 Can you explain why you think that
 13 gets -- does not violate the limitation on
 14 discussions between the experts and counsel?

15 MR. KEYES: Yes, because he
 16 specifically discussed it in Paragraph 35 of his
 17 report to explain what he's doing, and I want to
 18 understand why he's doing that.

19 MR. SOBOL: I instruct him not to
 20 answer that, if that's your reason.

21 BY MR. KEYES:

22 Q. Okay. So just so the record is clear,
 23 what is your understanding of the rationale for
 24 deducting as an offset any revenue received from

1 other governments or any other external sources
 2 that was provided for the sole purpose of
 3 funding opioid-specific activities?
 4 MR. SOBOL: I instruct him not to
 5 answer.
 6 You might ask the threshold question
 7 whether or not, yes or no, he has an
 8 understanding about it, because that might avoid
 9 any needless battle over this issue.
 10 BY MR. KEYES:
 11 Q. Well, did you follow the instruction?
 12 MR. SOBOL: If he doesn't have a
 13 memory --
 14 BY MR. KEYES:
 15 Q. Did you follow the instruction?
 16 MR. SOBOL: That's a different
 17 question. He can answer that question.
 18 A. As best I could, yes.
 19 BY MR. KEYES:
 20 Q. And did the instruction make sense to
 21 you?
 22 A. It made sense to me as an economist.
 23 Q. And as an economist, did the
 24 instruction have a reasonable rationale?

1 A. Well, I can only speak from an
 2 economics perspective, and it has a reasonable
 3 rationale from the standpoint of economics.
 4 Q. What is that rationale?
 5 A. Under the view that damages consist of
 6 costs incurred by the local governments, the
 7 local governments, the government of Cuyahoga,
 8 the government of Summit County as a result of
 9 the opioid crisis, the degree to which those
 10 costs are shared with another entity, for
 11 example, the state government or a federal
 12 government, then they do not count against the
 13 damages to the local jurisdictions.
 14 Now, as an economic statement, I
 15 understand from counsel that there's some legal
 16 issues that I don't appreciate, but that's my
 17 economic understanding.
 18 Q. So in this engagement, did you
 19 endeavor to exclude all expenditures that were
 20 funded by revenue from other sources, that is
 21 besides the two counties where the funding was
 22 dedicated to funding opioid-specific activities?
 23 MR. SOBOL: Objection.
 24 A. Well, this is more subtle than your

1 question may imply.
 2 The relevant economic question is, if
 3 the division would not have spent, say, \$100 on
 4 opioid-related activities, then how much would
 5 its budgets for other things have to fall? And
 6 depending on the form of the -- what are called
 7 in public finance intergovernmental transfers,
 8 that question could be answered in different
 9 ways.
 10 A simple case would be, suppose the
 11 federal government pays for 50 percent of
 12 community policing devoted to opioids, so if you
 13 can identify a budget category, we're going to
 14 send police out to do drug work that is directed
 15 to opioids, and the feds say we'll pay
 16 50 percent of that, then any costs of that are
 17 shared between the two entities, and 50 percent
 18 of those costs only would have been counted
 19 against the damages to the local government.
 20 Another example would be, say, a block
 21 grant, which is the other kind of spectrum here
 22 in which the local government receives an amount
 23 that is determined by a formula and said broadly
 24 you have to spend this on alcohol-drug abuse and

1 mental health services, but this is the amount
 2 you have. And then in that case, there would be
 3 no deduction because they would get that same
 4 intergovernmental transfer, however much they
 5 spent on opioids or not.
 6 So that's -- I know that was long,
 7 but --
 8 BY MR. KEYES:
 9 Q. So is the difference -- is the
 10 difference between --
 11 MR. SOBOL: He hasn't finished.
 12 A. I just have one more sentence.
 13 That's the kind of question that needs
 14 to be applied to various categories of
 15 governmental aid.
 16 BY MR. KEYES:
 17 Q. So is the difference between your two
 18 hypotheticals whether the locality could take
 19 those dollars and spend it on something besides
 20 opioids?
 21 A. Well, that's a kind of quick summary
 22 of what the issue is, would they have the money
 23 available to do something else if they didn't
 24 spend it on opioids.

1 Q. So you endeavor to exclude money that
 2 Summit County or Cuyahoga County received that
 3 it could only spend on the opioid problem,
 4 because if the opioid problem didn't exist they
 5 wouldn't have gotten the money, and they
 6 couldn't have spent the money on something else.
 7 Is that fair?

8 MR. SOBOL: Objection.

9 You may answer.

10 A. Well, it's not the way an economist
 11 would put the -- not the way an economist would
 12 characterize it. The way I would characterize
 13 it is if there's either a total or a share of
 14 spending that a local government incurs to
 15 defeat opioids, if some of that is offset
 16 against intergovernmental transfers, it only
 17 would be received if those expenditures are
 18 incurred, then that's treated as an offset to
 19 the local expenditures because that frees up
 20 some of the local money to be spent elsewhere.

21 BY MR. KEYES:

22 Q. Can you turn to Tables IV.13 and
 23 IV.12? It's the very end of your report.

24 A. Okay.

1 Q. So Table IV.12 is the damages for
 2 Cuyahoga County, correct?

3 A. That's correct.

4 Q. And Table IV.13 is damages for Summit
 5 County?

6 A. That's correct.

7 Q. And Table IV.14 is the summation of
 8 the two?

9 A. That's correct.

10 Q. Okay. And these are damages
 11 attributable to the defendants' misconduct,
 12 correct?

13 A. That's my understanding, yes.

14 Q. Okay. And you said earlier in your
 15 report that the analysis presented here does not
 16 attempt to distinguish damages attributable to
 17 manufacturers from those attributable to
 18 distributors or other CSA registrants."

19 Is that correct?

20 A. I remember saying that, yes.

21 Q. Okay. And when you use the phrase
 22 "other CSA registrants," what is the CSA you're
 23 referring to?

24 A. I think it's Controlled Substance Act.

1 Q. And who are the other CSA registrants?

2 A. Do you mind if I just go there and
 3 take a look?

4 Q. Sure. Page 12, Paragraph 19.

5 A. I believe some pharmacies are also CSA
 6 registrants.

7 Q. Are you including pharmacies in the
 8 "other CSA registrants" here?

9 A. I'm including whatever other CSA
 10 registrants there are.

11 Q. Okay. And you've identified
 12 pharmacies. Can you identify any other category
 13 of people who are CSA registrants besides
 14 manufacturers and distributors?

15 MR. SOBOL: And pharmacies.

16 BY MR. KEYES:

17 Q. And pharmacies.

18 A. No, that's all I can do.

19 Q. Are doctors CSA registrants?

20 A. I don't know.

21 Q. Have you looked into that in
 22 connection with your work in this case?

23 A. No, I haven't.

24 Q. Okay. Going back to the tables at the

1 end of your report, Tables IV.12, 13, and in the
 2 summary 14, these are calculations of what you
 3 call damages attributable to defendants'
 4 misconduct, correct?

5 A. That's correct.

6 Q. And when you refer to defendants'
 7 misconduct, you refer to misleading marketing,
 8 correct?

9 A. I believe I'm a bit more general than
 10 that, at least in some places.

11 Q. Okay. Well, let's go back to Pages 11
 12 and 12. Do you see that it says, "the damage
 13 methodology depends on the share of prescription
 14 opioid shipments attributable to misleading
 15 marketing," the very beginning of Paragraph 19.

16 A. Okay. There's the rest of the
 17 sentence there.

18 Q. Right.

19 But you do reference misleading
 20 marketing. So what damages -- have you
 21 calculated which damages are attributable to
 22 misleading marketing --

23 MR. SOBOL: Objection.

24 BY MR. KEYES:

1 Q. -- and not something else?

2 MR. SOBOL: Objection.

3 A. What I have calculated is an

4 estimated -- an estimate of the total damages

5 without attempting to attribute them to any of

6 the particular defendants.

7 BY MR. KEYES:

8 Q. Okay. So for the damages you've

9 calculated, have you determined which portion of

10 those damages were caused by misleading

11 marketing as opposed to something else?

12 A. Well, the way I would answer that is

13 following the methodology of the framework of

14 Rosenthal, Cutler, and me.

15 Professor Rosenthal estimates that

16 there are shipments due to defendants'

17 misleading advertising, so that's what her

18 empirical estimate is --

19 Q. And only that, correct?

20 MR. SOBOL: Were you finished with

21 your answer?

22 A. No, but I'll try to be brief.

23 That's what Professor Rosenthal does.

24 And then that's applied by Professor Cutler to

1 the shipments' harm connection, and that's

2 applied to me.

3 So kind of literally the formula of

4 those three combinations of analyses take

5 damages and attribute them to misleading

6 marketing by the defendants.

7 Now, I don't want to stop my answer

8 there, because I'm not making a determination

9 that there might have been other actors,

10 including distributors, including pharmacies,

11 that may have intervened in that process and

12 reduced the damages.

13 I don't know what -- I'm not opining

14 on their legal responsibility or what that

15 empirical allocation is. I have a kind of

16 total, and I'm not taking that total and saying,

17 this part is for you and this part is for you.

18 BY MR. KEYES:

19 Q. And when you say "this part is for you

20 and this part is for you," you're talking about

21 which part is attributable to misleading

22 marketing as opposed to something else?

23 A. Yes.

24 And the other thing I would say about

1 this is I don't necessarily think it's a zero

2 sum game. And I'm not sure how one would

3 approach it in the law of saying, well, maybe

4 more than one party was responsible for

5 something; then what happened, I don't know.

6 But my own economic analysis is to say, here's

7 the -- in aggregate what the damage is.

8 MR. SOBOL: Should we take the lunch

9 break?

10 MR. KEYES: Soon. Just give me a few

11 minutes.

12 BY MR. KEYES:

13 Q. Do these calculations identify which

14 damages are attributable to failures to control

15 the supply chain?

16 A. Well, as I tried to explain, my

17 damages are a kind of total damage. And if

18 you're asking me a hypothetical of what would

19 have happened differently had somebody done

20 something, first of all, it's probably not a

21 good question for me. And then it wasn't part

22 of my assignment to try to sort that out.

23 Q. Do these calculations identify which

24 damages are attributable to "excessive and

1 unnecessary shipments"?

2 MR. SOBOL: Objection.

3 Is that quote from his report, or

4 something else?

5 MR. KEYES: "Excessive and unnecessary

6 shipments" are in his report, yes.

7 A. It does ring true.

8 BY MR. KEYES:

9 Q. So you have identified certain damages

10 that you say are attributable to defendants'

11 misconduct. Those are set forth in the tables

12 at the end of your report, but those tables do

13 not break out damages based on what's

14 attributable to misleading marketing versus

15 failures to control the supply chain versus

16 excess of and unnecessary shipments, correct?

17 A. Well, no, I wouldn't put it that way.

18 The three-step empirical analysis associates

19 those damages to misleading marketing. That's

20 what Professor Rosenthal does connected to

21 Cutler connected to McGuire. So just from an

22 economic logical causality interpretation,

23 that's what those numbers show. I -- having

24 said that, there is a sense in which your

1 statement is correct, that given those total
 2 damages due to misleading advertising, I'm
 3 not -- I haven't taken them and decided what
 4 portion of these might be attributable to some
 5 other actors or who might be jointly responsible
 6 for something. I haven't done that analysis.
 7 Q. And have you identified or linked up
 8 damages with particular misleading marketing?
 9 A. Can you --
 10 MR. SOBOL: Objection.
 11 A. -- explain what you mean?
 12 BY MR. KEYES:
 13 Q. Well, you've referenced
 14 Professor Rosenthal's calculated -- made
 15 calculations about the number of opioid
 16 shipments that are attributable to misleading
 17 marketing and that her work feeds into
 18 Professor Cutler, right? And Professor Cutler's
 19 work feeds into your work, and you're the one
 20 that calculates damages?
 21 A. That's correct.
 22 Q. Do you offer any damages for this that
 23 are linked up with particular misleading
 24 marketing?

1 MR. SOBOL: Objection.
 2 A. "Particular" meaning what?
 3 BY MR. KEYES:
 4 Q. Particular marketing by particular
 5 defendants that was identified as being
 6 misleading.
 7 MR. SOBOL: Objection.
 8 A. My understanding of what
 9 Professor Rosenthal did was to aggregate the sum
 10 of misleading advertising by the defendants in
 11 this case, and that's what followed through.
 12 I also understand that if some
 13 misleading advertising of that were pulled out
 14 in some way, then the calculation would be very
 15 straightforward to do the multiplications
 16 slightly differently, thanks to Excel, and then
 17 come up with different damages numbers, which is
 18 to say I think I'm capable of doing that, but in
 19 this report I didn't try to attribute to
 20 particular defendants.
 21 BY MR. KEYES:
 22 Q. Particular groups of defendants or
 23 particular defendants, correct?
 24 MR. SOBOL: Objection.

1 A. I've covered this, I think, in my
 2 answers.
 3 BY MR. KEYES:
 4 Q. Okay. Have you in your report offered
 5 any calculation of damages caused by any
 6 particular defendant?
 7 MR. SOBOL: Objection to the form.
 8 A. I think this is kind of a version of
 9 what I just spoke about, and I use the aggregate
 10 figures that Professor Rosenthal and David used
 11 to come up with aggregate damages.
 12 BY MR. KEYES:
 13 Q. And those aggregate figures are based
 14 on misleading marketing?
 15 MR. SOBOL: Objection.
 16 A. Well, the aggregate figures are based
 17 on step one of this, which is Professor
 18 Rosenthal's analysis connecting a measure of
 19 misleading advertising to total shipments. So
 20 that is literally the causal statement.
 21 BY MR. KEYES:
 22 Q. And that follows through
 23 Professor Cutler's work into your work?
 24 A. That's correct.

1 Q. Do you offer any calculation of the
 2 specific damages caused by the specific conduct
 3 of any particular manufacturer or manufacturing
 4 defendant?
 5 MR. SOBOL: Objection, asked and
 6 answered. Objection, asked and answered.
 7 A. I don't see the difference between
 8 what I've already talked about and this
 9 question, if there is. I'm sorry.
 10 BY MR. KEYES:
 11 Q. Do you offer any calculation of the
 12 specific damages caused by the particular
 13 conduct of a particular distributor or
 14 distributor defendant?
 15 MR. SOBOL: Objection. Asked and
 16 answered.
 17 A. The answer is broadly similar to what
 18 I've answered already with respect to
 19 manufacturers. And what I do is estimate a
 20 total, and I don't attribute that to particular
 21 defendants, particular distributor defendants,
 22 nor do I attempt to allocate it even between the
 23 group of distributor defendants and the group of
 24 manufacturer defendants.

1 BY MR. KEYES:

2 Q. And the same is true for any retail

3 pharmacy defendants, correct?

4 MR. SOBOL: Objection.

5 A. I would answer in the same way, yes.

6 BY MR. KEYES:

7 Q. And the same is true for any, quote,

8 other CSA registrant, to use your phrase?

9 MR. SOBOL: Objection.

10 A. Maybe remind me what "the same" means,

11 sir.

12 BY MR. KEYES:

13 Q. "The same" means you haven't broken

14 out the damages that you attribute to the

15 conduct of any particular retail pharmacy

16 defendant, just like you said for any particular

17 distributor defendant or any particular

18 manufacturer defendant.

19 MR. SOBOL: Objection.

20 BY MR. KEYES:

21 Q. Correct?

22 MR. SOBOL: Objection.

23 A. Yes. What I have estimated is a total

24 damages without attempting to attribute that to

1 groups or individual defendants.

2 BY MR. KEYES:

3 Q. Have you undertaken to determine what

4 damages are attributable to the conduct of

5 entities that are not defendants in this case --

6 MR. SOBOL: Objection.

7 BY MR. KEYES:

8 Q. -- such as pharmacies or prescribing

9 doctors?

10 MR. SOBOL: Objection.

11 A. Well, my analysis was directed to the

12 defendant manufacturers and distributors in this

13 case, and so it was that aspect of damages that

14 I was asked to assess, and that's what I did.

15 BY MR. KEYES:

16 Q. And so did you factor in the conduct

17 of pharmacies or prescribing physicians in your

18 work?

19 MR. SOBOL: Objection.

20 A. That's not really a question at this

21 stage of the analysis. That's a question that

22 would be better directed to the -- to Rosenthal

23 or Cutler who were attempting to associate

24 shipments or harms to particular behavior. For

1 me, that's an input at this point.

2 BY MR. KEYES:

3 Q. Well, do you have an understanding,

4 sitting here today, as to whether

5 Professor Rosenthal or Professor Cutler factored

6 into their analysis the conduct of pharmacies or

7 prescribing doctors?

8 MR. SOBOL: Objection. Scope.

9 A. What they did was a valid empirical

10 analysis to identify the independent effect of

11 in Meredith's case misleading advertising, and

12 in David Cutler's case shipments on a harm, and

13 if one does that in a valid way, then that

14 answers the question at issue.

15 BY MR. KEYES:

16 Q. How does looking at the, what you

17 describe as the independent factor of

18 prescription shipments address the role that

19 pharmacies or prescribing physicians played?

20 MR. SOBOL: Objection. Scope.

21 A. This is -- the reports that we're

22 talking about now, the non-McGuire reports we're

23 talking about are reliable and valid approaches

24 to associating the magnitude of harm to the

1 factors they're interested in, and if you do

2 that, then you're kind of done. So they

3 determined what they needed to know, and they

4 designed a good way to do that.

5 BY MR. KEYES:

6 Q. So what did they do to address the

7 role of prescribing physicians or pharmacies, as

8 you understand it?

9 MR. SOBOL: Objection. Scope, asked

10 and answered.

11 A. They specified valid regressions that

12 were capable of identifying causality in a

13 reliable way.

14 BY MR. KEYES:

15 Q. You use the word "attribute" or

16 "attributable" throughout your report. What do

17 you mean by that?

18 MR. SOBOL: Well, can you show him an

19 example?

20 MR. KEYES: Sure.

21 A. I'm just going to get a little bit of

22 water while you page through there.

23 BY MR. KEYES:

24 Q. Sure. Why don't you look at Page 4.

1 A. Okay. I'll be right back.
 2 (Pause.)
 3 A. Okay. I'm on Page 4.
 4 Q. Okay. You talk about "whether there
 5 is a valid economic methodology for attributing
 6 a share of Bellwether government costs to
 7 defendants' misconduct; that is, to attribute
 8 damages to defendants' misconduct."
 9 A. Yes. Okay.
 10 Q. Do you see on Page 5, whether one may
 11 identify the costs of the divisions of the
 12 bellwether governments which may be attributable
 13 to defendants' misconduct?
 14 A. Yes, I see that. Well, actually I
 15 don't, but I believe you.
 16 Q. Damages are estimated by applying the
 17 estimates of the percent of harms attributable
 18 to defendants' misconduct.
 19 A. I'm sorry. Where is that last one?
 20 Q. It was on Page 7.
 21 A. Okay.
 22 Q. You talk about -- on Page 9 you talk
 23 about an economic framework used to calculate
 24 damages to the bellwether divisions that are

1 attributable to prescription opioid shipments.
 2 A. I see.
 3 Q. 15, "the main economic criteria for
 4 identifying costs or providing services" --
 5 MR. SOBOL: Wait, let him get there --
 6 or me, he's faster than I am. Go ahead.
 7 BY MR. KEYES:
 8 Q. "The main economic criteria for
 9 identifying costs of providing services
 10 attributable to the opioid" -- blank, missing
 11 word.
 12 A. I'm sorry, which paragraph are you in?
 13 Q. Paragraph 25.
 14 A. 25.
 15 Q. A few lines down there's a line that
 16 says, "Instead, as discussed in more detail
 17 below."
 18 Do you see that?
 19 A. Yes. Okay.
 20 Q. "The main economic criteria for
 21 identifying costs of providing services
 22 attributable to the opioid," and then there's a
 23 missing word.
 24 A. Yeah. Okay.

1 Q. So you keep saying "attribute" or
 2 "attributable." What do you mean by
 3 attributable?
 4 A. Due to.
 5 Q. Due to. What do you mean by "due to"?
 6 Are you offering the opinion that they are
 7 caused by the defendants' misconduct?
 8 MR. SOBOL: What's the "they"?
 9 MR. KEYES: The damages, whenever you
 10 refer to them.
 11 A. I'm relying on Rosenthal and Cutler
 12 before me to have done that causal work so that,
 13 given their findings, which I regard to be
 14 reliable, then these damages are due to
 15 defendants' misconduct.
 16 BY MR. KEYES:
 17 Q. So are you offering an opinion on
 18 causation?
 19 MR. SOBOL: Asked and answered.
 20 Objection.
 21 BY MR. KEYES:
 22 Q. You say you rely on Professor
 23 Rosenthal and Professor Cutler. I get it. Are
 24 you offering an opinion on causation?

1 MR. SOBOL: Objection.
 2 A. I know this is a legal word, so let me
 3 just be sure of what I am saying about this.
 4 Given the valid empirical
 5 investigation of both Rosenthal and Cutler, who
 6 at the end of his report comes to a conclusion,
 7 there is a causal conclusion that Cutler brings
 8 forth to say that this share of the harm are due
 9 to defendants' misconduct. That's David
 10 Cutler's statement. Taking that statement as
 11 given, then what I say is that this is the
 12 magnitude of damages that are due to defendants'
 13 misconduct.
 14 BY MR. KEYES:
 15 Q. So you believe that Professor Cutler
 16 is providing that causal link, and you're
 17 relying on him for that causal link?
 18 MR. SOBOL: Objection. Asked and
 19 answered.
 20 A. Well, there's two causal links that
 21 are involved, both Rosenthal's report and
 22 Cutler's report.
 23 BY MR. KEYES:
 24 Q. Okay. I was going to take them one at

1 a time, but we can take them together.

2 You believe that Professor Rosenthal

3 and Professor Cutler provide the causal links --

4 MR. SOBOL: Objection.

5 BY MR. KEYES:

6 Q. -- and you're relying on them for

7 those causal links?

8 MR. SOBOL: Objection.

9 Which question do you want him to

10 answer?

11 MR. KEYES: The one I just asked.

12 MR. SOBOL: Both of them? Objection

13 to the form then.

14 A. I do rely on Professor Rosenthal and

15 Professor Cutler whose empirical analyses

16 together reliably, in my view,

17 associates/attributes the harms to the

18 defendants' misconduct, and that's what I need

19 in order to do my allocation of damages.

20 BY MR. KEYES:

21 Q. Okay. So you are quantifying those

22 harms --

23 MR. SOBOL: Objection.

24 BY MR. KEYES:

1 Q. -- in your report?

2 MR. SOBOL: Objection.

3 BY MR. KEYES:

4 Q. You are quantifying what you are

5 saying are the cost consequences of those harms

6 to Summit County and Cuyahoga County?

7 A. Yeah, that's broadly what I'm doing.

8 Q. And you are relying on

9 Professor Cutler and Professor Rosenthal for the

10 causal link between the defendants' conduct and

11 those cost consequences?

12 MR. SOBOL: Objection. Asked and

13 answered.

14 BY MR. KEYES:

15 Q. Correct?

16 MR. SOBOL: Objection. Asked and

17 answered.

18 A. I'm not sure what kind of trouble I

19 might get myself into here, but yes, Rosenthal

20 studies the beginning with the misconduct

21 itself, to shipments. David picks it up at the

22 shipment stage, looks at harms. And so putting

23 those two reliable econometric investigations

24 together, one can attribute the harms to the

1 misconduct. And then --

2 BY MR. KEYES:

3 Q. And that's the work they're doing?

4 MR. SOBOL: He hasn't finished.

5 A. Then once those shares have been

6 determined by Professor Cutler, my work is to

7 take those shares, apply them to the variable

8 costs, and determine the dollar number.

9 BY MR. KEYES:

10 Q. All right. So you are quantifying

11 what you are saying are the cost consequences of

12 the harms that Professor Cutler and Professor

13 Rosenthal link up with the defendants' conduct?

14 MR. SOBOL: Objection. Asked and

15 answered.

16 A. Well, I mean, I'm -- the same question

17 has come at me like four or five times now, so

18 I'll just defer to my earlier answers on this,

19 if that's all right.

20 BY MR. KEYES:

21 Q. Did I say something that was

22 incorrect?

23 MR. SOBOL: Objection.

24 Let's take a lunch break. People are

1 getting a little testy. It's getting --

2 MR. KEYES: I'm not getting testy.

3 MR. SOBOL: No, you are.

4 MR. KEYES: I'm just trying to get an

5 answer to my question.

6 MR. SOBOL: It was 20 minutes ago that

7 I asked for the lunch break. I have been more

8 than gentlemanly about this.

9 MR. KEYES: I would like an answer to

10 my question. So --

11 MR. SOBOL: "Well, I'm not testy?"

12 Yes, you are.

13 BY MR. KEYES:

14 Q. You are quantifying what you are

15 saying are the cost consequences of the harms

16 that Professor Cutler and Professor Rosenthal

17 link up with the defendants' conduct. Is that

18 an accurate --

19 MR. SOBOL: Objection.

20 BY MR. KEYES:

21 Q. -- statement or not?

22 MR. SOBOL: Objection. Asked and

23 answered.

24 A. I think that was -- you're just

1 quoting from me, is that right?

2 Q. I'm repeating my question. Is that

3 accurate or not?

4 MR. SOBOL: I don't know where you

5 are.

6 BY MR. KEYES:

7 Q. If it's inaccurate, tell me why.

8 MR. SOBOL: I still don't know where

9 we are.

10 Do you understand the question that's

11 before you?

12 A. I want to go to lunch, too, so you ask

13 a clear question, I'll give a fresh answer, and

14 we'll see where we are.

15 BY MR. KEYES:

16 Q. In your damages report you are

17 quantifying what you are saying are the cost

18 consequences of the harms that Professor Cutler

19 and Professor Rosenthal link up with the

20 defendants' conduct?

21 MR. SOBOL: Objection. Asked and

22 answered.

23 A. There's three steps in this that make

24 it a causal connection between defendants'

1 misconduct and the cost consequences to the

2 local governments.

3 The first connection is investigated

4 by Professor Rosenthal who connects the

5 misconduct to the shipments. Cutler picks up

6 the shipments, connects up the harms, comes to a

7 conclusion for me about the share of harms

8 attributable to -- and I mean that in a causal

9 way -- attributable to defendants' misconduct,

10 and that allows me to use that share to quantify

11 it in dollar terms.

12 MR. SOBOL: Thank you.

13 MR. KEYES: Okay. Let's take a break

14 for lunch.

15 THE VIDEOGRAPHER: The time 1:02 p.m.,

16 and we're off the record.

17 (Whereupon, a luncheon recess was

18 taken.)

19

20

21

22

23

24

1 AFTERNOON SESSION

2

3 THE VIDEOGRAPHER: The time is

4 2:05 p.m., and we're on the record.

5 BY MR. KEYES:

6 Q. Professor McGuire, would you turn to

7 Page 16 of your report, which is McGuire Exhibit

8 Number 1? Are you there?

9 A. Yes.

10 Q. And in Paragraph 26 you say --

11 consider a hypothetical, right?

12 A. Yes, I see that.

13 Q. You say, "Suppose there is only one

14 Chief and there would need to be one Chief

15 regardless of whether there were an opioid

16 crisis," right?

17 A. I see that.

18 Q. And then you continue, "Suppose

19 further that the Chief works 8 hours a day and

20 his or her salary would be the same with or

21 without opioid-related activities." Correct?

22 A. I see that, yes.

23 Q. So in your hypothetical, the sheriff

24 is paid a salary and works eight hours a day?

1 A. Yes.

2 Q. Then you say, "In the absence of an

3 opioid crisis, the Chief would spend 8 hours

4 attending to non-opioid-related problems. If

5 the opioid crisis causes the Chief to spend 1

6 hour a day on opioid-related issues, the time

7 the Chief has for other issues falls by 1 hour."

8 Do you see that?

9 A. I do, yes.

10 Q. And then you acknowledge that the

11 government's spending on the chief is fixed.

12 Do you see that?

13 A. Yes, I don't see it, but I --

14 Q. Well, the next sentence says --

15 A. It's part of the example. I'm not

16 disputing it.

17 Q. You say in the next sentence, "What is

18 'fixed' in this example is the total work time

19 of (and spending on) the Chief of the Sheriff's

20 Department."

21 A. Yes.

22 Q. Okay. So the government doesn't spend

23 any more or less if the chief spends any time on

24 opioid-related issues, correct?

1 A. That's the nature of this example,
 2 yes.
 3 Q. Okay. And then you say if he has to
 4 start spending one hour per day on
 5 opioid-related issues, then he only has seven
 6 hours to spend on non-opioid-related issues.
 7 Correct?
 8 A. That's what the example says, yes.
 9 Q. And you then assert that "The
 10 reallocation of that time to opioid-related
 11 activity result in a loss of time and effort on
 12 alternative activities, which is an economic
 13 cost." Correct?
 14 A. That's what I say.
 15 Q. And that's an opportunity cost?
 16 A. You can think of that as an
 17 opportunity cost.
 18 Q. Which means that something is given up
 19 when the chief has to spend that one hour on
 20 opioid-related issues, correct?
 21 A. So far so good.
 22 Q. And that opportunity cost could be as
 23 simple as leisure time of the chief?
 24 MR. SOBOL: Objection.

1 A. Well, there you've lost me.
 2 BY MR. KEYES:
 3 Q. It could be.
 4 MR. SOBOL: Objection.
 5 BY MR. KEYES:
 6 Q. That's not what you specify in your
 7 hypothetical, but that is something that could
 8 be given up by the chief?
 9 MR. SOBOL: Objection.
 10 A. I don't know. You're adding something
 11 here. This is --
 12 BY MR. KEYES:
 13 Q. I am.
 14 A. This is work-related activities is
 15 what the point of the example is.
 16 Q. Okay. But the opportunity cost is not
 17 a financial cost --
 18 MR. SOBOL: Objection.
 19 BY MR. KEYES:
 20 Q. -- because the sheriff, the chief's
 21 employer, doesn't pay anything more if the chief
 22 spends one hour on opioid-related activities and
 23 seven hours on non-opioid-related activities
 24 instead of all eight hours on non-opioid-related

1 activities, correct?
 2 MR. SOBOL: Objection.
 3 A. No, I disagree with that, too. The
 4 appropriate metric of this opportunity cost is
 5 financial.
 6 BY MR. KEYES:
 7 Q. But it's not a financial cost. His
 8 employer doesn't spend anything more --
 9 MR. SOBOL: Objection. Asked and
 10 answered.
 11 BY MR. KEYES:
 12 Q. -- is that correct?
 13 MR. SOBOL: Objection. Asked and
 14 answered.
 15 A. Well, the example lays out and, in
 16 fact, specifies that even in the situation in
 17 which the time and the spending on the chief is
 18 the same, the appropriate economic approach to
 19 this question is the economic value of the
 20 activities given up if the chief spends an hour
 21 on opioids.
 22 BY MR. KEYES:
 23 Q. That's the economic value. That's not
 24 a financial cost necessarily.

1 MR. SOBOL: Objection. Asked and
 2 answered.
 3 A. I'm really not following what you're
 4 trying to get at here.
 5 BY MR. KEYES:
 6 Q. What is the extra money that the
 7 chief's employer is spending as a result of the
 8 chief spending one hour per day on
 9 opioid-related activities instead of all eight
 10 hours on non-opioid-related activities?
 11 A. Okay. This example, I think, is very
 12 explicit about that, and it states, as you read
 13 into the record a few minutes ago, that the
 14 spending on the chief is fixed. And the point
 15 of the example is even in this context in which
 16 the number of hours worked and the spending on
 17 the chief is fixed, the appropriate economic
 18 financial measure of the loss to the
 19 jurisdiction is the wage of the chief spent on
 20 opioids.
 21 Q. If the chief goes from eight hours a
 22 day on non-opioid-related activities to one hour
 23 on opioid-related activities, and seven hours on
 24 non-opioid-related activities, is there any

1 out-of-pocket expense for his employer?

2 MR. SOBOL: Objection.

3 A. I didn't hear the first part of your

4 hypothetical, sorry.

5 BY MR. KEYES:

6 Q. If the chief goes from eight hours a

7 day on non-opioid-related activities to one hour

8 per day on opioid-related activities, and seven

9 hours per day on non-opioid-related activities,

10 is there any out-of-pocket expense for his

11 employer?

12 A. What do you mean by "out-of-pocket

13 expense"?

14 Q. Is there any additional expenditure of

15 funds by the chief's employer when that switch

16 occurs?

17 MR. SOBOL: Objection.

18 A. This example states that there is --

19 the spending is fixed as the chief spends an

20 hour on opioids instead of on the other

21 problems, and it's intended to convey that even

22 in this situation the appropriate economic

23 measure relief is the cost of the chief's time,

24 one hour, spent on opioids.

1 BY MR. KEYES:

2 Q. Okay. So you acknowledge that in that

3 situation, the switch from eight hours to seven

4 for non-opioid-related activities and one for

5 opioid-related activities does not cause his

6 employer any out-of-pocket cost, any increased

7 out-of-pocket costs?

8 MR. SOBOL: Objection.

9 A. Even if the spending is fixed, then

10 the appropriate economic measure of the cost is

11 the value of the chief's time

12 associated/attributable to opioids.

13 BY MR. KEYES:

14 Q. Sir, you've said that in your report,

15 and you said it several times today, so I think

16 you're covered on that point.

17 A. Okay. Good.

18 Q. I'd ask you to answer my question.

19 You keep referring to even if it is fixed.

20 I'm asking, because it's fixed, even

21 though the sheriff switches how he spends those

22 eight hours a day, his employer is not incurring

23 any additional out-of-pocket cost, correct?

24 MR. SOBOL: Objection, asked and

1 answered. Objection, asked and answered.

2 A. The assumption in the -- my

3 hypothetical is that the spending is fixed.

4 BY MR. KEYES:

5 Q. Which means there's no additional

6 out-of-pocket expense?

7 MR. SOBOL: Are you finished with your

8 answer?

9 BY MR. KEYES:

10 Q. That's what my question is about.

11 A. Well, it puzzles me a little why you

12 have to ask a question if I think I stated

13 extremely clearly in my report that the spending

14 is fixed.

15 But the point of the example is that

16 that does not imply that there's no economic

17 cost to the opioid activities.

18 Q. Right. So answer my question. You

19 keep saying it's fixed. You're an economist,

20 you're familiar with fixed, not necessarily

21 everybody is familiar with fixed. And another

22 way of phrasing that is the amount that his

23 employer spends is set, it is fixed, and it will

24 not change. His employer will not spend any

1 more money because he changes how he spends

2 those eight hours a day, correct?

3 MR. SOBOL: Objection.

4 Mischaracterizes the testimony.

5 A. I just want to read this back here.

6 In this example the government is paying for one

7 hour of the chief's time to deal with opioids.

8 What is fixed in this example is the total work

9 time of and spending on the chief.

10 I'm mystified why you have to ask me a

11 question that is the spending on the chief

12 fixed, and --

13 BY MR. KEYES:

14 Q. Because you've already said that in

15 your report and I'm trying to put -- I'm trying

16 to see if that's the same as saying there's no

17 additional out-of-pocket expenditure by his

18 employer. Yes or no.

19 MR. SOBOL: Objection. Asked and

20 answered. It's not a yes-or-no question.

21 BY MR. KEYES:

22 Q. He did not answer that question.

23 MR. SOBOL: He didn't answer it the

24 way you want him to answer the question, but

1 he's the one who is testifying, not you.

2 BY MR. KEYES:

3 Q. My question is, is there an additional

4 out-of-pocket expenditure by his employer when

5 the make-up -- how he spends his eight hours

6 changes? That's a yes-or-no question. It's not

7 about fixed. It's about whether there's an

8 additional out-of-pocket expenditure when he

9 goes from eight hours on non-opioid to seven

10 hours on non-opioid and one hour on opioid. You

11 can say no, you can say yes, and then you can

12 explain your answer. Yes or no, is there an

13 additional out-of-pocket expenditure?

14 MR. SOBOL: So which question do you

15 want him to ask and -- be asked now? You asked

16 two questions in that paragraph.

17 BY MR. KEYES:

18 Q. In your hypothetical, when he goes

19 from eight hours on non-opioid-related

20 activities to seven hours on non-opioid related

21 activities and one hour on opioid-related

22 activities --

23 A. I think we got that -- sorry to

24 interrupt.

1 Q. -- does his employer have any

2 additional out-of-pocket expense as compared to

3 when he spent all eight hours on

4 non-opioid-related activities?

5 MR. SOBOL: Objection. Asked and

6 answered.

7 A. This is going to be two sentences.

8 The paragraph makes the assumption that the

9 spending on the chief is fixed. That does not,

10 however, imply that there is no economic cost to

11 the diversion of the chief's time to the opioid

12 crisis.

13 BY MR. KEYES:

14 Q. And you didn't say a word about

15 out-of-pocket expense, which is what my question

16 is about.

17 So in that hypothetical, is there an

18 additional out-of-pocket expenditure by his

19 employer?

20 MR. SOBOL: I instruct you not to

21 answer.

22 BY MR. KEYES:

23 Q. Yes or no?

24 MR. SOBOL: He's answered the question

1 five times already.

2 BY MR. KEYES:

3 Q. Are you saying you can't answer my

4 question yes or no? Is that your position?

5 MR. SOBOL: Which question do you want

6 him to answer yes or no?

7 MR. KEYES: Whether there's an

8 additional out-of-pocket expenditure in that

9 scenario.

10 MR. SOBOL: He's given the answer

11 several times.

12 (Phone interruption.)

13 MR. KEYES: Will you mark this point

14 in the transcript?

15 MR. SOBOL: What was that?

16 MR. KEYES: I think it's an

17 internal --

18 MR. SOBOL: Sorry.

19 BY MR. KEYES:

20 Q. Okay. Now I'm going to change your

21 hypothetical.

22 What if the chief is paid to work

23 eight hours a day but actually only does work

24 five hours a day, okay, and the rest is leisure

1 time, downtime, where he's not actually working,

2 in that case --

3 MR. SOBOL: So he's getting paid to

4 work but he's not working?

5 MR. KEYES: He's getting paid for

6 eight hours, and only working for five hours,

7 and the rest is downtime.

8 BY MR. KEYES:

9 Q. In that case, having to spend an hour

10 on opioid-related issues does not take away any

11 of the time he needs to spend on

12 non-opioid-related issues, correct?

13 MR. SOBOL: Objection.

14 A. No, I disagree with that.

15 BY MR. KEYES:

16 Q. If he only works five hours and he's

17 paid to work eight hours, then how does working

18 an hour on opioid-related activities take away

19 from the time he's actually spending on

20 non-opioid-related activities?

21 MR. SOBOL: Objection.

22 A. Well, this is something I explicitly

23 addressed in my report, which is that it's not

24 realistic to expect that each individual or each

1 department is fully occupied at all times. And,
 2 in fact, it's not even optimal from the
 3 standpoint of the government not to have some
 4 slack capacity in activities of especially a
 5 public safety official.

6 The demands on these officials are
 7 stochastic, which -- by which I mean it kind of
 8 can be up and down, and you want to have some
 9 slack capacity. The diversion of an hour of the
 10 chief's time from slack capacity doesn't mean
 11 it's not coming at a cost to the government.

12 BY MR. KEYES:

13 Q. My question didn't pose that. I'm
 14 posing a hypothetical. You're an expert. I get
 15 to ask you hypothetical questions, and I'd ask
 16 you to answer the hypothetical.

17 In my hypothetical he doesn't actually
 18 work eight hours a day. He's paid to work eight
 19 hours a day. He's on the job eight hours a day,
 20 actually only does work five hours a day, and
 21 the other three hours are downtime. Okay?

22 That's the hypothetical.

23 In that hypothetical situation, asking
 24 him to spend an hour each day on opioid-related

1 activities does not take away any time, any of
 2 the five hours he has to spend on
 3 non-opioid-related activities, correct?

4 MR. SOBOL: Objection. Asked and
 5 answered.

6 A. Well, I think it's, you know, simply a
 7 farfetched and unrealistic hypothetical with
 8 respect to staff of a -- any government
 9 department in which the efficient level of
 10 staffing would imply that people don't sit
 11 around half of the day doing nothing, and it
 12 does imply that there's excess capacity in
 13 especially public safety related positions.

14 BY MR. KEYES:

15 Q. Sir --

16 A. So I'm just not prepared to agree with
 17 you that you can make up an hour without having
 18 it come out of some capacity of the chief to do
 19 something else.

20 Q. It might come out of his capacity, it
 21 might come out of his downtime, it might come
 22 out of his leisure time, but it is not taking
 23 away from the five hours that he has to spend on
 24 non-opioid-related activities precisely because

1 he has that capacity, correct?

2 MR. SOBOL: Objection. Asked and
 3 answered. I've counted four times now.

4 A. Which I don't agree with that
 5 depiction of the role of staffing in a city
 6 government, or any government, or really any
 7 position at all.

8 BY MR. KEYES:

9 Q. Sir, you can call my hypotheticals
 10 whatever you want. You can affix whatever
 11 adjective. I'm asking you within the parameters
 12 of that hypothetical whether you agree with it,
 13 because it is a matter of logic that if you're
 14 only spending five hours and you're not doing
 15 any work with the other three hours, then asking
 16 someone to spend one of those three hours on
 17 opioid-related activities is not pulling away
 18 from the five hours on non-opioid-related
 19 activities. Do you agree with me as a matter of
 20 logic within that hypothetical?

21 MR. SOBOL: Wait. Objection. Asked
 22 and answered five times.

23 You want him to give the same answer,
 24 you want to --

1 MR. KEYES: I want him to answer my
 2 question.

3 MR. SOBOL: Yes, I understand. But do
 4 you want him to give the same answer again, or
 5 what do you want to do?

6 MR. KEYES: I'd like you to object,
 7 and then he can answer my question.

8 MR. SOBOL: Okay. I object.

9 BY MR. KEYES:

10 Q. You've made your distaste clear,
 11 that's fine, but it's my hypothetical. I want
 12 you -- I don't --

13 MR. SOBOL: He's telling you your
 14 hypothetical doesn't make any sense.

15 BY MR. KEYES:

16 Q. I'm not asking you to handicap whether
 17 my hypothetical is correct or not. I'm asking
 18 you to answer within the scope of my
 19 hypothetical, logically asking him to spend one
 20 more hour on opioid-related activities does not
 21 take away from the five hours that he's been
 22 spending on non-opioid-related activities,
 23 correct, as a matter of logic?

24 MR. SOBOL: Objection. Asked and

1 answered.

2 Go ahead, Tom.

3 A. I think the -- another way to kind of

4 go at this from the standpoint of an answer is

5 that the hypothetical is really incomplete. It

6 doesn't recognize the stochastic nature of

7 demands on a public safety official that imply

8 there always will be downtime, or almost always

9 will be downtime for a public official. And

10 it's just simply not correct as a matter of

11 logic that devoting an extra hour to

12 opioid-related activities has no cost to a local

13 government in terms of other things personnel

14 might do.

15 BY MR. KEYES:

16 Q. You keep reverting to the opinions you

17 want to offer in this case, and you're offering

18 them, and you're entitled to offer them. I'm

19 not asking you to repeat your opinions. I'm

20 asking you to answer my hypothetical. My

21 hypothetical wasn't about whether there was a

22 cost to local government or not.

23 My question was, if he spends that one

24 hour on opioid-related activities, it does not

1 take away from the five hours that he's spending

2 on non-opioid-related activities, because by

3 definition he's on the job for eight hours. It

4 may take away from his leisure time. It may

5 take away from his excess capacity. It does not

6 keep him from doing the five hours of work on

7 non-opioid-related activities. Do you agree

8 with that as a matter of logic?

9 MR. SOBOL: Objection.

10 This is the seventh time, and unless

11 the witness has any more to say in response to

12 the question, I suggest that he just say that.

13 A. I don't have anything new to add. If

14 you would like me to go back over my answer,

15 I'll do so.

16 BY MR. KEYES:

17 Q. Okay. Now I'm going to change the

18 hypothetical, and again I'm going to ask you to

19 stick with my hypothetical, whether you think

20 it's realistic or not. Okay?

21 A. Okay.

22 MR. SOBOL: No, that's not okay. Hold

23 on a second. He's not to instruct you how to

24 answer the questions. I do.

1 MR. KEYES: No, you're not to instruct

2 him now to answer the questions either. And

3 I've been rather permissive. You can object.

4 You can instruct him not to answer. You cannot

5 instruct him how to answer. And I'd ask you to

6 stop doing it.

7 MR. SOBOL: You're right. You're

8 right about that.

9 But he is not to tell you -- instruct

10 you how to answer the question. If you think

11 that that hypothetical is unrealistic and you

12 can't answer the question as it's framed, then

13 you answer truthfully as you have been, okay,

14 and not if he tells you, you know, accept my

15 unrealistic hypothetical. That's not what

16 you're supposed to be doing. You're supposed to

17 answer the questions truthfully.

18 BY MR. KEYES:

19 Q. A new hypothetical.

20 The chief works very inefficiently for

21 those eight hours a day. He takes eight hours

22 to do the work, but he could easily get it done

23 in five hours, and he could use the rest of that

24 time for leisure or downtime. Okay?

1 Now, in that hypothetical, in that

2 hypothetical, if he worked efficiently and got

3 the non-opioid-related activities done in five

4 hours, then spending an hour on opioid-related

5 issues would not take away from the work on

6 non-opioid-related activities, correct?

7 MR. SOBOL: Is that a question?

8 Objection to the form.

9 BY MR. KEYES:

10 Q. Correct. The logic of a hypothetical.

11 MR. SOBOL: Objection to form.

12 A. I kind of get what you're driving at,

13 but I didn't get -- if you wouldn't mind giving

14 me the hypothetical again.

15 BY MR. KEYES:

16 Q. Sure. I've got -- in my hypothetical

17 you have a chief that works very inefficiently

18 for eight hours a day, and he takes eight hours

19 to do the work on the job for eight hours a day,

20 and he takes the eight hours to do the work, but

21 he could easily get it done in five hours and he

22 could spend the other three on leisure or

23 downtime.

24 If he worked efficiently and got his

1 work done in five hours instead of taking the
2 full eight hours, then he would have three hours
3 of leisure, or if he were asked to spend an hour
4 of those three hours on opioid-related
5 activities it still wouldn't take away from him
6 getting the non-opioid-related work done,
7 correct?

8 MR. SOBOL: Object to the form.

9 A. Well, I think this is also an
10 inappropriate way to characterize the economics
11 of this situation. Let me go about this by
12 making an analogy for you.

13 Suppose you were talking about
14 consumers instead of local government, and you
15 were asked to -- say someone bangs up my car and
16 I have to pay \$75 to fix the car. So I don't
17 make any more. My income is fixed. And I have
18 to take 75 of my dollars and use it to fix my
19 car.

20 What is the cost to that consumer of
21 having to fix the car? What I say it is, is
22 \$75. It doesn't matter from an economic
23 standpoint that if you look at some other item
24 of the budget I spend my money on -- suppose I

1 go to restaurants with some other part of my
2 money and I don't make a very good choice of
3 restaurants, I choose food inefficiently, I
4 don't get the most calories per dollar or
5 however you want to -- however you want to
6 characterize the efficiency with which I spend
7 the rest of my money, it's still \$75.

8 That's the kind of mainstream economic

9 way to quantify the cost, even if you start
10 putting in stuff about he's not spending his
11 money efficiently on his restaurants.

12 BY MR. KEYES:

13 Q. You're completely changing the
14 hypothetical. In your hypothetical he has to
15 spend the \$75 on one thing or another thing, and
16 you've already admitted in my hypothetical that
17 his employer is going to spend the same amount
18 because it's paying him a salary regardless of
19 how he spends the time. So I don't want to
20 spend time on your hypotheticals. They're
21 completely different than mine.

22 In my hypothetical, if he works more
23 efficiently and, therefore, he gets his
24 non-opioid-related work done in five hours and

1 he has three extra hours, he has three hours of
2 leisure time, or if he's asked to spend an hour
3 on opioid-related activities he still gets the
4 five hours of work done on non-opioid-related
5 activities and he's got two hours left for
6 leisure time, do you disagree with the logic of
7 that? You can tell me it's not realistic, but
8 do you disagree with the logic of that
9 hypothetical?

10 MR. SOBOL: Objection.

11 A. I do disagree with the logic of that
12 hypothetical.

13 BY MR. KEYES:

14 Q. In my hypothetical the only
15 opportunity cost is the chief loses leisure
16 time --

17 MR. SOBOL: Object.

18 BY MR. KEYES:

19 Q. -- because instead of three hours of
20 leisure time, now he only has two, with that
21 third hour being spent on opioid-related
22 activities.

23 MR. SOBOL: Objection. Asked and
24 answered.

1 A. I don't agree with that.

2 BY MR. KEYES:

3 Q. And you've counted that lost leisure
4 time as damages to his employer.

5 MR. SOBOL: Objection.

6 A. I don't agree with that at all.

7 BY MR. KEYES:

8 Q. Have you heard of Parkinson's law?

9 A. Parkinson's law?

10 Q. Yes.

11 A. I have. Give me a hint.

12 Q. Well, what does Parkinson's law say,
13 as you remember it?

14 A. I need a hint. I know I've heard of
15 it, but --

16 Q. Have you heard of Parkinson's law
17 saying that work expands to fill the time
18 available for its completion?

19 A. I have heard of that, yes.

20 Q. Have you done any studies of
21 Parkinson's law?

22 A. Well, I would say yes, I have.

23 Q. Okay. What have you done to study
24 Parkinson's law?

1 A. A form of Parkinson's law which is in
2 my -- part of my research that has to do with
3 healthcare payment.
4 So the analogy to Parkinson's law here
5 would be if a healthcare provider, say a
6 hospital, were given a prospective payment, it's
7 called, for taking care of a patient within a
8 hospital, the fixed payment might be \$4,000,
9 just to choose a number, and the pressure of the
10 market with hospitals competing for patients
11 would imply that hospitals would spend up to
12 \$4,000 to take care of that patient, which is a
13 version of Parkinson's law.
14 Q. Is that study referenced anywhere in
15 your CV?
16 A. Many, many times in my -- I've studied
17 that many times.
18 Q. And what is that study called, if we
19 look for it in your CV?
20 A. There would be the words prospective
21 payment. I work on capitation payments to
22 health plans, I work on physician payments and
23 fixed pricing to physicians, hospitals, and
24 other healthcare providers, all of which have

1 this element of the effect of competition,
2 implying that plans and providers will tend to
3 spend so as to use the budget they're offered.
4 Q. And is that a study of how they use
5 time, or how they use dollars?
6 A. That's a big part of their providers'
7 budgets are the time that they and their workers
8 spend.
9 Q. Have you studied the application of
10 Parkinson's law in the workplace?
11 A. Well, these are workplaces. I'm
12 talking about hospitals, doctors' offices.
13 Q. You're talking about places where
14 people work. I'm asking, have you studied the
15 application of Parkinson's law to how people
16 spend their time in the workplace?
17 MR. SOBOL: Objection. Asked and
18 answered.
19 A. How people spend their time? I'm not
20 sure what you're getting at here.
21 BY MR. KEYES:
22 Q. Well, have you conducted a study of
23 Parkinson's law as applied to how employees
24 spend their time in the workplace?

1 MR. SOBOL: Objection. Asked and
2 answered.
3 A. The Parkinson's law is the time -- the
4 work fills the time available. The how they
5 spend their time is not a Parkinson's law
6 question. It's a question about the nature of
7 their work.
8 I'm just trying to understand what
9 your next hypothetical is about.
10 BY MR. KEYES:
11 Q. So have you studied the application of
12 Parkinson's law to see how employees spend their
13 time in the workplace during the workday?
14 MR. SOBOL: Objection. Asked and
15 answered again.
16 A. Well, I'm going to say yes, although I
17 think it's -- the analogy to Parkinson's law is
18 not as close.
19 The term in economics for this area of
20 inquiry would be the multi-tasking problem in
21 which an employee has a job to do, but that job
22 involves a number of different goals or
23 activities. And the objective of the employer,
24 or in some cases the regulator or the payer, is

1 to convey to the employee, healthcare provider,
2 incentives so they address the multi-tasking
3 problem in a way that is in the interest of the
4 regulator.
5 So this -- that's a little abstract,
6 but it has to do with things like pay for
7 performance, has to do with whether that matters
8 to providers, in what ways pay for performance
9 affects providers.
10 I've done this even in the substance
11 abuse area to evaluate state-based pay for
12 performance systems in substance abuse to see
13 how providers respond to that and address the
14 multiple objectives the state has in that
15 context.
16 Q. Have you read any studies of the
17 application of Parkinson's law in the workplace
18 as applied to how employees spend their time?
19 A. Well, if you permit me to include the
20 studies I've just been referring to as falling
21 within the broad category of the level of
22 resources available and the activities of
23 workers, then yeah, I read all kinds of things
24 in this area.

1 Q. But your answer is yes with that broad
2 category that you've just described?

3 A. Well, I'm a health economist, so I
4 tend to read things in the health economics
5 world.

6 Q. Under Parkinson's law, you cannot
7 conclude that the chief needs eight hours to do
8 his work just because he spent eight hours on
9 it, correct?

10 A. Under Parkinson's law. Maybe you
11 could be specific about what you mean by "under
12 Parkinson's law."

13 Q. Well, given Parkinson's law, which
14 says the time it takes to complete work expands
15 to fill the time allotted, if Parkinson's law
16 holds true, you can't conclude that the chief
17 needs eight hours to do his work just because he
18 spent eight hours doing it --

19 MR. SOBOL: Objection. Form.

20 BY MR. KEYES:

21 Q. -- correct?

22 MR. SOBOL: Objection. Form.

23 A. I know you get to ask the questions,
24 but under my interpretation of Parkinson's law

1 here, it would be something like the work
2 expands to fill the time available. And I'm
3 kind of like that at the office. I will go in
4 and plan to leave at a certain time, and I'll
5 work the whole time that I'm there. So the work
6 expands, but it's not like I'm not working. And
7 if somebody asks me to do something over here
8 that's different, then I do something less over
9 there.

10 BY MR. KEYES:

11 Q. Under the application of Parkinson's
12 law, the chief may have taken eight hours to do
13 his work because he had eight hours available to
14 do it, so he was going to be on the job for
15 eight hours.

16 MR. SOBOL: Objection. Form.

17 BY MR. KEYES:

18 Q. Right?

19 A. I don't know about the "right."

20 Q. Well, correct? Do you agree with that
21 proposition?

22 MR. SOBOL: Objection to form.

23 A. I'm going to withhold agree or
24 disagree until you go on a little bit.

1 BY MR. KEYES:

2 Q. Well, under the application of
3 Parkinson's law, if it holds true, the chief may
4 have taken eight hours to do the work just
5 because he was going to be on the job for eight
6 hours, not because he actually needed eight
7 hours to get all that work done.

8 MR. SOBOL: Objection.

9 Is there a question before him?

10 BY MR. KEYES:

11 Q. I asked you before, do you agree with
12 that statement?

13 A. I don't agree with that statement.

14 Q. And you can't rule out that if the
15 chief were only given seven hours to do his work
16 he could get it done in seven hours?

17 MR. SOBOL: Objection.

18 Is there a question.

19 BY MR. KEYES:

20 Q. Correct?

21 MR. SOBOL: Objection.

22 A. This is an improper economic
23 application of the concept of opportunity cost.
24 The basic idea of opportunity cost is you devote

1 resources. It could be money, it could be time
2 or something over here, and there's stuff lost
3 because of that. It's why in my restaurant
4 example I didn't need to tell you what I didn't
5 buy in order to be confident that the cost of
6 fixing my car was \$75. Why didn't I need to
7 tell you that? Why -- and aren't their
8 hypotheticals that you could make up that would
9 interfere with that inference? But you just
10 don't need to do it in an economic opportunity
11 cost approach. It comes out of something.
12 It's -- some other activities are there, and
13 there's a cost.

14 BY MR. KEYES:

15 Q. Or it could come out of leisure. It
16 doesn't necessarily come out of other work,
17 right?

18 MR. SOBOL: Objection.

19 A. You're trying to get -- to avoid the
20 opportunity cost approach. It's not the way
21 opportunity cost is thought about in economics.

22 BY MR. KEYES:

23 Q. No, sir. I understand from economics
24 that everything has an opportunity cost,

1 literally everything, right, because when you
2 make one choice, you're by definition not
3 choosing other things. I'm not debating whether
4 it has an opportunity cost.

5 I am trying to get you to answer my
6 question whether that opportunity cost can be
7 someone's leisure time or someone's downtime, or
8 it can be excess capacity, it doesn't mean that
9 other work necessarily doesn't get done. And
10 you seem to be wrestling with that proposition
11 suggesting that, no, the opportunity cost is
12 that other work necessarily does not get done,
13 and I'm trying to understand why you're
14 wrestling with that.

15 A. I think you said that backwards, but I
16 know what you're getting at.

17 Because it's not the conventional
18 application of the economics of opportunity
19 cost, which is a very time-honored approach to
20 asking the cost of things, as in my car example
21 and the restaurant example. There's an
22 opportunity cost to that money, there's an
23 opportunity cost to the time, and that tells me
24 what I need to know.

1 Q. Okay. So in my hypothetical where it
2 doesn't take the chief eight hours to do his
3 non-opioid-related work and he has at least an
4 hour of downtime or leisure time, if he is then
5 asked to spend an hour on opioid-related work,
6 the opportunity cost is giving up that leisure
7 or downtime?

8 MR. SOBOL: Objection.

9 A. That's not the way I would approach it
10 as an economist, which is my approach is
11 grounded in the idea of opportunity cost. When
12 I spend \$75 on my car, I don't need to be
13 quizzed about where that \$75 comes from.

14 BY MR. KEYES:

15 Q. Are you just as productive every
16 single day, or are there some days when you're
17 more productive and some days when you're less
18 productive?

19 MR. SOBOL: Objection. Scope.

20 A. That's a subjective thing, but I
21 sometimes feel more or less productive.

22 BY MR. KEYES:

23 Q. And so in the same block of time,
24 sometimes you get more done and sometimes you

1 get less done?

2 A. Yeah, broadly speaking, of course,
3 these days one does more than one thing in the
4 same block of time.

5 Q. Have you studied -- in order to
6 evaluate whether this hypothetical of the chief
7 is accurate, you'd need to go talk to the chief
8 more and say, how much time do you spend, are
9 you working productively, are you working
10 efficiently, do you have downtime, in order to
11 resolve this debate we're having about whether
12 working on opioid-related activities takes away
13 from non-opioid-related activities?

14 A. No, I wouldn't need to do that.

15 Q. You wouldn't need to do that.

16 And so in this case, not in the
17 hypothetical, in order to determine what people
18 are giving up in terms of the activities they're
19 spending during the day, you wouldn't talk to
20 any employees of Summit County or any employees
21 of Cuyahoga County?

22 MR. SOBOL: Objection.

23 Is there a question?

24 BY MR. KEYES:

1 Q. Is that right?

2 MR. SOBOL: Objection.

3 A. You went very general right at the end
4 of that question. With respect to?

5 BY MR. KEYES:

6 Q. With respect to what people are giving
7 up when they spend their time on one activity
8 versus the other. If you don't want to talk to
9 the chief in my hypothetical or your
10 hypothetical, then I take it you don't want to
11 talk to any of the employees of Summit County or
12 Cuyahoga County.

13 A. No, I do.

14 MR. SOBOL: Wait a second. Objection.

15 MR. KEYES: Okay.

16 MR. SOBOL: I don't understand the
17 question.

18 A. I'm also a bit lost.

19 BY MR. KEYES:

20 Q. Okay. I asked in the hypothetical --
21 take your hypothetical or my hypothetical. We
22 have a disagreement over whether the chief
23 actually needs all eight hours, whether the
24 chief could get the same amount of work done in

1 less time, whether working on opioid-related
 2 activities would take away from
 3 non-opioid-related activities. You said that's
 4 not a realistic hypothetical. I say it is a
 5 realistic hypothetical.
 6 In that hypothetical we could go talk
 7 to the chief to figure out whether the chief
 8 does have leisure time, whether the chief does
 9 have downtime, whether the chief is working
 10 efficiently, correct?
 11 MR. SOBOL: Objection.
 12 Don't answer the question.
 13 BY MR. KEYES:
 14 Q. We could do that?
 15 MR. SOBOL: Objection. I instruct him
 16 not to answer. I have no idea what you asked
 17 him. You just talked for eight lines and then
 18 are asking the word "correct." Makes no sense.
 19 BY MR. KEYES:
 20 Q. We could go talk to the chief to learn
 21 more about how the chief spends his time,
 22 correct?
 23 MR. SOBOL: Objection. Objection.
 24 Who is "we"?

1 MR. KEYES: The professor and I as we
 2 debate our hypothetical.
 3 A. Our team.
 4 BY MR. KEYES:
 5 Q. So it is -- we could do that. You
 6 can't disagree. Now, you may choose not to do
 7 it, and I asked would you, and you said no, so
 8 now I'm moving from the hypothetical to the
 9 facts of this case.
 10 A. Okay.
 11 Q. Is it the case, then, that you see no
 12 need to talk to the employees of Summit County
 13 or Cuyahoga County to figure out how they're
 14 actually spending their time and whether they
 15 have excess time that could be spent on
 16 opioid-related activities?
 17 MR. SOBOL: Objection. Asked and
 18 answered.
 19 A. I think our disagreement is more
 20 fundamental. It's about whether the economic
 21 concept of opportunity cost is the right way to
 22 go here, which I assume it is, as I state in my
 23 report. And once I make a determination that
 24 opportunity cost is the way to go, then I'm able

1 to identify what the opportunity cost of a
 2 resource is in terms of dollars or in terms of
 3 time by saying this resource is less available
 4 to other things.
 5 And just to -- if I were to try to
 6 convince a fact-finder about this, I think the
 7 analogy to consumers is extremely appropriate,
 8 that we don't ask individuals what would you
 9 have done with that \$75 and expect an answer
 10 that is -- that you approve of to say that they
 11 spent it efficiently, or that they had leisure
 12 time and they could have worked more and made
 13 the \$75. We don't do that. And the reason we
 14 don't do it is because the idea of opportunity
 15 cost as it comes out of them either in terms of
 16 money or time, and that's a good solid economic
 17 measure of what the value of the resource is.
 18 BY MR. KEYES:
 19 Q. Have you studied whether the personnel
 20 of any of the affected divisions had excess
 21 capacity?
 22 A. I'm going to ask you to define "excess
 23 capacity."
 24 Q. You talk about excess capacity in your

1 report.
 2 A. Okay. So...
 3 Q. Using excess capacity as defined in
 4 your report, did you interview -- did you study
 5 whether the personnel of any of the affected
 6 divisions had excess capacity?
 7 MR. SOBOL: Objection.
 8 A. I discussed excess capacity in my
 9 report, for the purpose of explaining why the
 10 presence of excess capacity does not imply that
 11 the opportunity cost concept here doesn't work.
 12 It does work.
 13 And as I said a few minutes ago when
 14 we started on this discussion, especially for
 15 public safety, there's excess capacity in a
 16 sense sometimes when people aren't fully busy,
 17 but that's not inefficient. We have to have
 18 that.
 19 BY MR. KEYES:
 20 Q. Have you studied whether any of the
 21 personnel for any of the affected divisions had
 22 excess capacity?
 23 MR. SOBOL: Objection. Asked and
 24 answered.

1 A. This wasn't necessary for me to be
2 able to do my -- to apply my opportunity cost
3 analysis.
4 BY MR. KEYES:
5 Q. So you didn't study it, correct?
6 MR. SOBOL: Objection. Asked and
7 answered.
8 A. It wasn't necessary that I study it.
9 BY MR. KEYES:
10 Q. Whether it's necessary or not, did you
11 study it?
12 MR. SOBOL: Objection.
13 That's the fourth time, maybe the
14 third, but certainly more than two.
15 A. I just want to be clear about the role
16 of excess capacity, and why if the logic I'm
17 applying to it is correct, which I believe it
18 is, then I don't need to be able to make a
19 judgment about the EMS personnel and how much
20 time they sit around the fire station, and is
21 that excess capacity or is that appropriate
22 capacity to be able to respond to stochastic
23 healthcare events.
24 BY MR. KEYES:

1 Q. Do you believe that there is such a
2 thing as optimal excess capacity where you have
3 just enough, but not too much?
4 A. If you're able to write down a problem
5 sort of completely, then there are ways to
6 characterize what optimal capacity would mean
7 in, for example, say, a bridge or something like
8 that.
9 Q. Do you believe that there is such a
10 thing as efficient excess capacity and such a
11 thing as inefficient excess capacity?
12 A. Well, these things would be connected,
13 the concepts you're asking about. If there's an
14 optimal excess capacity that's a certain level
15 of excess capacity, one could call that the
16 efficient level of excess capacity. You might
17 be a little more generous with respect to your
18 application depending on what the context is and
19 say there's kind of a range of things we would
20 regard to be efficient in this context, and then
21 you might be able to sometimes determine if
22 there's inefficient excess capacity.
23 Q. Did you study whether any of the
24 personnel of any of the affected divisions had

1 suboptimal or inefficient excess capacity?
2 A. Well, this -- as I answered a few
3 minutes ago, this is not something I need to do
4 to be able to apply the concept of opportunity
5 cost.
6 Q. So you didn't do it?
7 MR. SOBOL: Objection.
8 A. I didn't need to know what I would
9 have spent with that \$75 to be able to answer
10 that it cost me \$75 to fix the car.
11 BY MR. KEYES:
12 Q. Does every municipal government
13 division need excess capacity?
14 A. I think probably in some sense yes,
15 but it would vary according to the division.
16 Q. So you would expect that every
17 municipal government division did have excess
18 capacity?
19 MR. SOBOL: Objection.
20 A. In the sense that I answered a few
21 minutes just this previous question, it would be
22 a yes, without any implication that excess
23 capacity was inefficient.
24 BY MR. KEYES:

1 Q. Did you study whether any of the
2 affected divisions was short-staffed because of
3 opioid-related needs and, therefore, couldn't
4 respond to an emergency?
5 MR. SOBOL: Objection.
6 A. There is evidence in the record for
7 that effect of -- by short-staffing, for
8 example, I mean, police who would have been
9 forced to work on opioid-related activities and
10 could not continue to do some things they'd done
11 previously.
12 BY MR. KEYES:
13 Q. Anything else?
14 A. I think it's true in family services,
15 in the medical examiner office. They weren't
16 able to continue to take contracted work from
17 outside the county. There may be other
18 examples.
19 Q. My question was, did you study whether
20 any of the affected divisions was short-staffed
21 because of opioid-related needs and, therefore,
22 couldn't respond to an emergency?
23 A. Oh, an emergency.
24 Q. Did you study that?

1 A. I think in many cases crime is an
2 emergency, so short-staffing of police probably
3 would fit there.

4 Q. Anything else?

5 A. Nothing that comes to mind.

6 Q. Okay. And what evidence can you point
7 to in this record that there was short-staffing
8 of the police such that the police could not
9 respond to emergencies?

10 A. Well, I would say there's two types of
11 evidence. One is the lessened ability of police
12 to respond to emergencies that just logically
13 follows from the fact that police have fewer
14 hours that are not devoted to opioids. So it
15 seems clear that if, say, 20 percent of police
16 time is devoted to opioids over here, then
17 there's a smaller amount of police time that is
18 available to respond to emergencies with respect
19 to other public safety issues. And there's some
20 specific testimony in the record also about
21 activities the police had done before, and with
22 opioids now they're not able to do.

23 Q. Well, you gave an example that said if
24 you're spending, say, 20 percent of police time

1 devoted to opioids over here, then there's a
2 smaller amount of police time that is available
3 to respond to emergencies, so that would draw
4 down on any excess capacity.

5 My question is, are you aware of any
6 evidence that the police of either county were
7 short-staffed such that they could not respond
8 to any emergencies?

9 MR. SOBOL: Objection.

10 A. Could not respond. They could
11 certainly respond less quickly and less well.
12 Was it impossible? I don't know.

13 BY MR. KEYES:

14 Q. Are you aware of any evidence that the
15 police of either Summit County or Cuyahoga
16 County were short-staffed such that they did not
17 respond to any emergencies?

18 A. Well, again, here there's two forms of
19 evidence. The first one is my inference from
20 the less time police would have to respond to
21 other non-opioid emergencies. It seems obvious
22 to me that they would be less able to respond to
23 those kind of emergencies.

24 And there's also evidence in the

1 record of -- I'm not sure what official was
2 saying this -- of how police were diverted to
3 opioids and could not respond to homicides and
4 rapes, which I consider to be emergencies.

5 Q. And whose testimony are you referring
6 to there?

7 A. See, I don't -- I know I read it. I
8 don't know if I cite it or it's in the
9 depositions that I read or what exactly.

10 Q. You cited that deposition testimony
11 and then you cited the inference. But you're
12 making an assumption that the excess capacity
13 was so drawn down that they were so
14 short-staffed that, in fact, they did not
15 respond to any emergencies, but you can't point
16 to any emergencies they did not respond to,
17 right?

18 MR. SOBOL: Objection.

19 Which question?

20 BY MR. KEYES:

21 Q. You can answer.

22 A. Well, there was two aspects of support
23 I mention with respect to the inference. One is
24 the less time being available, which seems --

1 I'm not sure why you would not agree with that.
2 And the other is kind of anecdotes of local
3 officials that specifically mention homicides
4 and rapes that would go uninvestigated because
5 police are diverted into opioids.

6 Q. You cite in your report "the well
7 accepted analogy between government and consumer
8 decision-making with respect to resource
9 allocation."

10 Do you recall that?

11 A. I do. If you wouldn't mind --

12 Q. It's on Page 14 of your report.

13 A. -- telling me the page.

14 Q. Do you see that?

15 A. I do.

16 Q. And in your discussion you cite
17 Professor Gruber and Professor Rosen and
18 Professor Mikesell?

19 A. Yes.

20 Q. And so when you refer to them, do you
21 consider them to be knowledgeable about this
22 analogy and whether this analogy holds?

23 A. I do, yes.

24 Q. Do you consider them to be

1 authoritative about this analogy and whether
 2 this analogy holds?
 3 A. I do, yes.
 4 Q. On Page 15 you say "Government" --
 5 this is at the top of the page, "Governments
 6 maximize the welfare of their constituents when
 7 resources are allocated to their most highly
 8 valued use, leading to a budgetary allocation in
 9 which the social value of an additional dollar
 10 is equal across services."
 11 Do you see that?
 12 A. Yes, I see it.
 13 Q. And you say "Governments maximize,"
 14 not governments can maximize. You say
 15 "Governments maximize." So you're positing that
 16 governments in practice maximize the welfare of
 17 their constituents when they allocate resources
 18 to their most highly valued use, right?
 19 A. Well, this is in the context of the
 20 analogy you mentioned a moment ago between
 21 government behavior and consumer behavior, and
 22 what do we say about consumers when we regard
 23 how we approach the question of how consumers
 24 behave? We say they maximize utility, which

1 means they make choices on their own behalf that
 2 are in their own best interest as they see it.
 3 Q. Where consumer is the solitary single
 4 decision-maker of his or her own welfare,
 5 correct?
 6 A. Not always, but sometimes. That's the
 7 accepted model of consumer behavior, and we're
 8 talking here about the analogy between the model
 9 of consumer behavior and the model of government
 10 behavior, and that's the analogy.
 11 The analogous approach to government
 12 would be they have a kind of budget, they have
 13 alternative uses for that budget, and they use
 14 that budget in order to maximize, which is
 15 really the same nature of assumption as you are
 16 getting involved in when you say consumers
 17 maximize the value of the budget, which has the
 18 implication that the resources at the margin are
 19 -- held the same value.
 20 Q. Did you study if Summit County and
 21 Cuyahoga County governments allocated their
 22 resources to the most highly valued use when
 23 they allocated their budget dollars?
 24 MR. SOBOL: Objection.

1 A. This is why I included this material
 2 right here, so the reader would understand the
 3 economic approach that I'm applying to resource
 4 allocation, which is a conventional economic
 5 approach that has analogies to consumer behavior
 6 and that underlies the idea of opportunity cost.
 7 BY MR. KEYES:
 8 Q. Did you study if Summit County and
 9 Cuyahoga County governments allocated their
 10 resources to the most highly valued use when
 11 they allocated their budget dollars?
 12 MR. SOBOL: Objection. Asked and
 13 answered.
 14 A. Using this approach to government
 15 behavior, the application to any particular
 16 government is that yes, they are doing that.
 17 BY MR. KEYES:
 18 Q. But that's an ipse dixit. I posit a
 19 theory, therefore it must hold true here.
 20 I'm asking you, did you study, did you
 21 conduct any investigation of facts and gather
 22 empirical evidence to confirm that the theory
 23 holds true here such that Summit County and
 24 Cuyahoga County allocated their resources to

1 maximize their welfare and allocating them to
 2 the most highly valued use? Did you do any kind
 3 of study here as to Summit County and Cuyahoga
 4 County?
 5 MR. SOBOL: Objection. Asked and
 6 answered twice before.
 7 A. The purpose of this section is to lay
 8 out the economic approach to understanding that
 9 resource allocation.
 10 And the direct answer to your question
 11 here, and I'm going to rely on the analogy to
 12 consumers again, so the \$75 which I've been fond
 13 of talking about as the cost to the consumer of
 14 fixing their car, do I have to assume that that
 15 consumer is maximizing utility in where they
 16 took that money from in order for you or some
 17 other reasonable person to conclude that \$75 is
 18 what the cost to them of fixing the car is?
 19 Kind of. I mean, you need to have a conception
 20 that consumers are doing something in their
 21 self-interest.
 22 And the same -- exactly the same
 23 analogy is true for the governments here.
 24 They're spending their resources, the time of

1 their personnel on something, within an economic
 2 framework in which opportunity cost is the
 3 appropriate way to judge the value of resources.
 4 It's not necessary for me to make an assessment
 5 of whether you are maximizing utility at the
 6 time you spend \$75 to fix your car, and it's not
 7 necessary for me to make an investigation of the
 8 optimal resource allocation that governments are
 9 deciding about in the context of -- we're
 10 talking about here today.
 11 BY MR. KEYES:
 12 Q. I asked a yes-or-no question. Did you
 13 study if Summit County and Cuyahoga County
 14 governments allocated their resources to the
 15 most highly valued use when they allocated their
 16 budget dollars? Yes, they did, or no, they
 17 didn't?
 18 MR. SOBOL: Or you can't answer the
 19 question.
 20 BY MR. KEYES:
 21 Q. Yes, you studied, no, I didn't study
 22 it, and then if you didn't study it you can tell
 23 me why you think it was unnecessary. But did
 24 you study it?

1 MR. SOBOL: Object to the form. I'm
 2 not sure which question you're asking him.
 3 And if you can't answer the question
 4 yes or no, he's not required to. Asked and
 5 answered, also, four times.
 6 BY MR. KEYES:
 7 Q. Is that a question you can't answer,
 8 did you study it or not?
 9 MR. SOBOL: Well, now I don't know
 10 what question you're asking. Are you pressing
 11 the one before? Are you withdrawing that and
 12 asking a new one?
 13 BY MR. KEYES:
 14 Q. Go ahead.
 15 MR. SOBOL: Go ahead what?
 16 BY MR. KEYES:
 17 Q. Answer the question I just posed.
 18 MR. SOBOL: You just posed four of
 19 them.
 20 MR. KEYES: You can do your best to
 21 interfere. We're going to just keep going
 22 through it.
 23 MR. SOBOL: I know. I'm just trying
 24 to get -- have a clear question and answer.

1 Maybe ask a new question.
 2 BY MR. KEYES:
 3 Q. My question is, did you study whether
 4 the Cuyahoga County or Summit County governments
 5 allocated their resources to the most highly
 6 valued use when they allocated their budget
 7 dollars? Yes or no.
 8 MR. SOBOL: Objection. Asked and
 9 answered three times.
 10 If you cannot answer the question yes
 11 or no, answer the question truthfully.
 12 A. I don't feel like I can answer that
 13 question yes or no.
 14 BY MR. KEYES:
 15 Q. Okay. Did you study whether --
 16 MR. SOBOL: Well, you've interrupted
 17 him.
 18 A. There is an important sense in which I
 19 studied this, which is to consider the
 20 appropriate economic framework for understanding
 21 local government behavior, relying on the
 22 analogy to consumer behavior, which I won't go
 23 through again but which you've heard, and using
 24 that to enable me to infer from resources

1 allocated to a particular use the opportunity
 2 cost of those resources elsewhere. That's
 3 mainstream economics, application of opportunity
 4 cost. Economists do it all the time in consumer
 5 and other areas. That's what it is.
 6 BY MR. KEYES:
 7 Q. Did you study whether efficiency drove
 8 the Cuyahoga County or Summit County government
 9 decision-making in their budget process?
 10 MR. SOBOL: Objection. Asked and
 11 answered.
 12 A. It's a slightly different form of the
 13 same question, as I interpret it. And the
 14 nature of my study is to identify the
 15 appropriate economic framework for inferring the
 16 value of resources in alternative uses in the
 17 context of reallocation of resources to the
 18 opioid crisis, and just -- excuse me -- that's
 19 the opportunity cost approach, it's mainstream
 20 economics, and that's exactly what I do here.
 21 BY MR. KEYES:
 22 Q. Did you study the impact of other
 23 factors on the Cuyahoga County and Summit County
 24 government budget setting?

1 MR. SOBOL: Objection. Asked and
2 answered.
3 A. I'm not sure what you mean with this
4 question.
5 BY MR. KEYES:
6 Q. Well, you're positing without actually
7 looking at the specifics of Cuyahoga County or
8 Summit County that efficiency drove the budget
9 process. And I'm asking, did you study the
10 impact of other factors on the budget process
11 that would explain why dollars were allocated
12 the way they were in the budget?
13 MR. SOBOL: Objection. Asked and
14 answered.
15 A. You know, I don't have a lot to add to
16 what I've mentioned already, that within the
17 conventional economic framework of government
18 behavior, then identification of the resources
19 devoted to a particular use is the measure of
20 opportunity cost.
21 BY MR. KEYES:
22 Q. Can you identify what factors other
23 than efficiency might drive or influence the
24 budget process for a municipality?

1 A. The budget process? I'm sorry, what
2 do you mean by "the budget process" here?
3 Q. The process by which decisions are
4 made as to how to allocate dollars in the
5 budget.
6 A. I think I discuss this a bit in my
7 report. In some cases governments are
8 constrained by inability to raise additional
9 revenue. They might, if they're attempting to
10 benefit the citizens, raise more revenue and
11 spend even more than they're able to with their
12 limited budget on some particular application.
13 So there the other factor might be something
14 that makes it difficult or even constrains a
15 local government from raising revenue or
16 borrowing funds, for example.
17 Q. What if revenue cannot be increased
18 such that the total amount of revenue is fixed,
19 can you identify what factors besides efficiency
20 may drive or influence how those dollars are
21 allocated in the budget?
22 A. Well, I have a framework for that,
23 which is that the government is using funds in
24 order to benefit the citizens, and that's -- I

1 realize that's a general statement. Excuse me,
2 one more sec. There are factors that would play
3 into that which have to do with, say, changes in
4 the population composition that may require more
5 spending on public schools or some other
6 government activity.
7 Q. Did you study the influence of
8 politics on how Summit County and Cuyahoga
9 County allocated dollars in their budgets?
10 A. What do you mean "in this case"? I
11 know what politics is, but what do you mean
12 here?
13 Q. I mean political considerations. I
14 mean appeasing certain groups, punishing other
15 groups, maximizing chances of being
16 re-elected --
17 A. I realize --
18 Q. -- any of those factors. Do you
19 understand any of those factors?
20 A. I realize that elected officials are
21 human beings, but still the accepted economic
22 approach to this is to regard these things as
23 playing out in a way to -- so the funds are used
24 for the benefit of the citizens.

1 Q. You keep saying the accepted approach.
2 I'm not asking about theory. I'm asking about
3 Summit County and Cuyahoga County.
4 Did you study, for instance, the
5 impact of lobbying or the influence of interest
6 groups and how Summit County and Cuyahoga County
7 allocated dollars in their budget?
8 A. Well, that's an example of a factor
9 that would be involved in expression of the
10 interest of the citizens, and it may well
11 influence the budget allocation, but it doesn't
12 change the ability to use opportunity cost as a
13 framework for assessing the impact of opioids.
14 Q. Did you study the impact of corruption
15 on the decision-making of the Summit County or
16 Cuyahoga County government officials in
17 allocating dollars in the budget?
18 MR. SOBOL: Objection. Assumes a fact
19 not in evidence.
20 A. I don't know that there were -- that
21 there was corruption. I'm going to stop there,
22 see if you let me get away with that.
23 BY MR. KEYES:
24 Q. You don't know because you didn't

1 study it, right? I mean, you didn't know
 2 because you didn't study it. My question wasn't
 3 whether there was. My question is, did you
 4 study it? Did you study whether corruption had
 5 any impact on the decision-making of Cuyahoga
 6 County or Summit County government officials
 7 when they were deciding how to allocate dollars
 8 in their budget?
 9 MR. SOBOL: Objection. Assumes a fact
 10 not in evidence.
 11 A. That would have been outside the scope
 12 of my report.
 13 MR. SOBOL: I could have said that,
 14 too, but I was leaving that to you.
 15 BY MR. KEYES:
 16 Q. Are you aware of whether there have
 17 been issues of corruption in either Summit
 18 County or Cuyahoga County?
 19 A. I'm not aware.
 20 Q. Did you look into that at all? Did
 21 you ask the question, has there been a problem
 22 with corruption in Cuyahoga County or Summit
 23 County?
 24 MR. SOBOL: Objection.

1 A. It wasn't part of my assignment.
 2 BY MR. KEYES:
 3 Q. Did you do any research into whether
 4 there had been problems with political
 5 corruption in either Summit County or Cuyahoga
 6 County?
 7 MR. SOBOL: Objection.
 8 A. It wasn't part of my assignment.
 9 BY MR. KEYES:
 10 Q. Are you aware that there have been
 11 high-level Cuyahoga County officials who have
 12 been indicted?
 13 MR. SOBOL: Objection.
 14 A. I'm not aware.
 15 BY MR. KEYES:
 16 Q. Are you aware that some of them have
 17 pled guilty?
 18 MR. SOBOL: Objection.
 19 A. I'm also not aware of that.
 20 BY MR. KEYES:
 21 Q. Are you aware that there are several
 22 Cuyahoga County officials who are currently
 23 indicted, who are being prosecuted for political
 24 corruption?

1 A. I'm not aware of that.
 2 Can I ask my able assistant to get me
 3 some water?
 4 MR. SOBOL: Yes, you may. You can ask
 5 all you want. I'll have my assistant get your
 6 water for you.
 7 BY MR. KEYES:
 8 Q. You say -- on Page 15 in Paragraph 24,
 9 you talk about what efficiency requires.
 10 Do you see that?
 11 A. Yes.
 12 Q. Again that's the theory, what
 13 efficiency requires?
 14 A. Yes.
 15 Q. But not something that you've studied
 16 with respect to Summit County or Cuyahoga County
 17 in this engagement, because you're sticking with
 18 the theory and you think the theory holds,
 19 right?
 20 A. I'm probably going to disagree with
 21 you, but why don't you go on a little bit and
 22 I'll chime in.
 23 Q. Well --
 24 MR. SOBOL: Well, how about this,

1 rather than him going on a while and you chiming
 2 in, questions --
 3 BY MR. KEYES:
 4 Q. I'm not going to table questions. You
 5 can answer or not, but --
 6 MR. SOBOL: How about you ask
 7 questions and you give answers.
 8 A. I'll be a better witness.
 9 I disagree.
 10 BY MR. KEYES:
 11 Q. Okay. Why do you disagree?
 12 MR. SOBOL: Well, wait. I don't even
 13 know what's going on right now. I don't know
 14 that you're disagreeing or agreeing or whether
 15 it's supposed to be --
 16 MR. KEYES: Stop coaching him.
 17 BY MR. KEYES:
 18 Q. Why do you disagree?
 19 MR. SOBOL: I'm not coaching him, but
 20 I am giving him instructions that he's not to be
 21 chiming in or having conversation. He has to
 22 ask questions, and you give an answer.
 23 THE WITNESS: My bad.
 24 BY MR. KEYES:

1 Q. Why do you disagree?

2 MR. SOBOL: Objection.

3 To what?

4 A. It's not solely a theoretical

5 exercise. The increased demands that I'm

6 referring to here are the opioid crisis.

7 BY MR. KEYES:

8 Q. Okay. You say "This reallocation of

9 resources is the cost of providing Bellwether

10 government services in response to the opioid

11 crisis." Right?

12 A. Yes, I say that.

13 Q. Okay. What dollars were reallocated

14 to the opioid crisis?

15 A. The ones that are contained in my

16 report.

17 Q. Away from what?

18 A. Away from other activities of the

19 division.

20 Q. What activities of the division?

21 A. This is the opportunity cost question

22 again. I don't need to know where that \$75

23 comes from, and I don't need to know what

24 exactly was done less.

1 Q. Okay. So if I go through your tables

2 and you point me to dollars that you say are the

3 opportunity cost and are damages in your

4 framework, and I ask you what would those

5 dollars have been spent on if they weren't spent

6 on the opioid crisis, are you going to tell me

7 every time that you don't know and you don't

8 need to know?

9 MR. SOBOL: Objection.

10 A. I'm going to tell you that these

11 dollars are a valid measure of opportunity cost.

12 And if you ask me, well, what exactly,

13 Professor McGuire? It came out of the budget

14 available for other things, and I can't tell you

15 what the mix of those things are, just like --

16 just like if I spend \$75 fixing my car, what

17 exactly did that come out of, Tom, when you

18 spend that money? I may not even know, and it's

19 not important for assessing the opportunity cost

20 of that spending.

21 BY MR. KEYES:

22 Q. For any affected division, did you

23 attempt to determine what the dollars that you

24 describe as damages would have been spent on if

1 they weren't spent on opioid services?

2 MR. SOBOL: Objection.

3 A. I do think I answered that question.

4 BY MR. KEYES:

5 Q. You said it's not important for

6 assessing the opportunity cost to that spending,

7 so I'm asking, did you attempt to look at it?

8 MR. SOBOL: Objection.

9 A. I didn't need to in order to apply the

10 opportunity cost framework.

11 BY MR. KEYES:

12 Q. So you didn't?

13 MR. SOBOL: Objection. Asked and

14 answered.

15 BY MR. KEYES:

16 Q. Go ahead, you can finish.

17 A. Because I didn't need to.

18 Q. You say on Page 18 of your report,

19 Paragraph 30, you say, "the damage analysis

20 presented in this report focuses on the value of

21 resources that the Bellwether jurisdictions

22 shifted from alternative uses to combat the

23 opioid epidemic."

24 Do you see that?

1 MR. SOBOL: That was a part of the

2 sentence?

3 MR. KEYES: Yes, it's the part I'm

4 asking the question about, yes.

5 A. I do see that, yes.

6 BY MR. KEYES:

7 Q. Okay. And the resources that you say

8 were shifted from alternative uses are the

9 dollars that you have described as damages --

10 MR. SOBOL: Objection.

11 BY MR. KEYES:

12 Q. -- correct?

13 MR. SOBOL: Objection.

14 A. Are measured by the dollars.

15 BY MR. KEYES:

16 Q. And you say that those are resources

17 that were shifted from alternative uses. What

18 were the alternative uses that would have

19 received those dollars but for the opioid

20 epidemic and the defendants' conduct?

21 A. It would have been a

22 division-by-division question, and it would

23 consist of the other activities of the division.

24 Q. And are you able to tell me with any

1 specifics what those are for any division?

2 A. It does depend on the division.

3 Q. Did you talk to anyone at Summit

4 County or Cuyahoga County in any division about

5 what they would have done with the dollars that

6 you say were shifted away towards opioid-related

7 services?

8 A. This relates to what we spoke about

9 earlier this morning and the question of

10 diversion. And it's something that I was

11 interested in from the get-go, and asked my

12 staff to be on the lookout for evidence of

13 diversion both in terms of their interviews and

14 in terms of the record here, including the

15 deposition. So in many of these contexts, yes,

16 there was.

17 Q. In the answer you just gave, you're

18 talking about diversion of dollars, not

19 diversion of opioids, correct?

20 A. Yes, diversion of resources of the

21 local government, not diversion of the drugs.

22 Q. If you turn again to the last three

23 tables in your report, these are the total

24 damages that you attribute to the defendants'

1 misconduct.

2 A. Okay.

3 Q. Have you calculated the total damages

4 that you attribute to the defendants' misconduct

5 that results from people using or abusing

6 illicit opioids as distinct from prescription

7 opioids?

8 A. Yes, I think I understand the

9 question.

10 The inputs to my analysis in the form

11 of Professor Cutler's share don't make that

12 distinction, so in my work I don't calculate

13 those separately, which is to say that I don't

14 calculate the harms appearing either through the

15 proximal cost of illicit or licit opioids.

16 Q. You don't distinguish between illicit

17 opioids and prescription opioids for purposes of

18 your calculation of damages, right?

19 A. In the sense of the production of

20 these tables, the -- I use the share that David

21 Cutler gives me, and that share is the share of,

22 for example, opioid deaths that could be because

23 of illicit or licit opioids that are

24 attributable to the defendants' misconduct, and

1 in that share of death are both.

2 Q. You reference these tables. I should

3 expand my question.

4 Anywhere in your report do you offer

5 calculations of damages that distinguish between

6 damages arising from people's use or abuse of

7 illicit opioids as distinct from people's use or

8 abuse of prescription opioids?

9 A. I believe this is where I do damages

10 in my report, so it would be here, and that

11 distinction is --

12 Q. Is not here?

13 A. -- not made here.

14 Q. Similarly, anywhere in your report do

15 you offer calculations of damages that

16 distinguish between damages arising from people

17 using prescription opioids that were prescribed

18 to them versus damages arising from people using

19 prescription opioids that were diverted and

20 weren't prescribed to them?

21 A. I understand the question.

22 The similar answer, the numbers I'm

23 provided by Professor Cutler are total numbers

24 that include whatever route of harm there is

1 from prescription opioids, either through

2 affecting the person directly, through

3 diversion, or through moving on to illicit

4 drugs. It's all in one number.

5 Q. So you do not offer calculations that

6 distinguish between those two?

7 A. I don't break it out into those

8 categories.

9 MR. KEYES: Okay. Why don't we take a

10 ten-minute break.

11 THE VIDEOGRAPHER: The time is

12 3:21 p.m., and we're off the record.

13 (Whereupon, a recess was taken.)

14 THE VIDEOGRAPHER: The time is

15 3:46 p.m., and we're on the record.

16 BY MR. KEYES:

17 Q. Professor McGuire, I put in front of

18 you a laptop, and on the laptop and on the

19 various screens in the room is a copy of an

20 Excel spreadsheet that was produced by Summit

21 County. The Bates number of that Excel

22 spreadsheet in native version is

23 SUMMIT_001952976.

24 Do you see that on your screen? Do

1 you see the Bates number at the top?

2 A. At the top. Oh, yes, okay. I do.

3 Q. Okay. And if you'd open your report

4 to Page 35, at the top of Page 35 you say,

5 "Expenditure data for Summit County were

6 provided by the county government." You drop a

7 footnote, footnote 83 --

8 MR. SOBOL: I'm sorry, where? Okay.

9 Go ahead, sorry.

10 BY MR. KEYES:

11 Q. You drop a footnote. It's number 83,

12 and it references SUMMIT_001952976.

13 Do you see that?

14 A. I do.

15 Q. And that matches the Bates number of

16 the Excel spreadsheet on your screen?

17 A. Yes.

18 Q. Earlier you said you couldn't recall

19 the expenditure data and you didn't know what

20 this Bates number referred to. Does this

21 refresh your recollection?

22 A. Yes.

23 Q. So you said in your report that from

24 these expenditure data, identify those costs

1 that would be expected to vary in response to

2 changes in the services provided by these

3 divisions. Now that you have this expenditure

4 data in front of you, can you walk me through

5 how you identified what you've called affected

6 costs and how you identified for affected costs

7 whether they were overhead or non-overhead?

8 MR. SOBOL: Objection.

9 A. All right. This is the original

10 document from Summit County?

11 BY MR. KEYES:

12 Q. Yes.

13 A. Okay. There's a number of components

14 to it. Just give me a second here to see what

15 else you've got for me.

16 And these charts, were they -- this is

17 all Summit County stuff, not after it's been

18 worked over by Compass Lex?

19 Q. This is the document as it was

20 produced in discovery, same Bates number as

21 referenced in your report.

22 A. Okay.

23 Q. I take it Compass Lexecon worked it

24 over at some point?

1 MR. SOBOL: Objection.

2 MR. KEYES: Why? It's the phrase he

3 just used.

4 MR. SOBOL: Well, because you asked

5 one question, then you asked another question,

6 so now it's compound. You didn't let him answer

7 the first question.

8 A. Okay.

9 MR. SOBOL: See, I'm on top of it. I

10 know what I'm doing sometimes.

11 MR. KEYES: Actually that was only one

12 question, but we'll let the record speak for

13 itself. I think Mr. McGuire is still

14 familiarizing himself with this spreadsheet.

15 A. Yeah, making -- it's a very long

16 spreadsheet. So let's take an example here.

17 MR. SOBOL: Before you do, is it

18 recorded what he's looking at, or -- it is,

19 okay. Thank you.

20 A. Okay. I'm just -- I'm just going down

21 until I find what I think will be a good example

22 to talk about. Maybe the mental health board.

23 BY MR. KEYES:

24 Q. If we take the -- what's on the screen

1 right now, can you walk me through for any

2 particular account on this screen whether it's

3 an affected cost or not and whether you classify

4 it as overhead or not?

5 A. Yeah. The ADM Board, which is what

6 we're looking at now, is a little bit different

7 than a regular division of one of the counties,

8 that it receives funding from the county as well

9 as from the state and the federal government, so

10 that's kind of a special case.

11 I prefer to talk about a more typical

12 case.

13 Q. Well, can you answer my question as to

14 the ADM Board? If not, say so. We'll move to

15 something else.

16 A. All right, I'll go back to ADM.

17 All right. So the allocation of costs

18 of expenditures is not done in the revenue

19 lines. So, for example, row 217, I suppose it

20 is, is a revenue line.

21 Q. How do you know that?

22 A. Property taxes, revenue, pool budget.

23 Q. By the name of the account?

24 A. Yes, it could be a heading. So it's

1 historical revenues and expenditures through
 2 lines 12, yeah, by the name. These are revenue
 3 categories.
 4 Q. Okay.
 5 A. They may become relevant here, but
 6 it's not in the allocation that you asked me
 7 about, which is the designation of fixed and
 8 variable. Okay. So...
 9 Q. You're scrolling through a whole bunch
 10 of what appear to be expenses, correct?
 11 A. These are expense categories.
 12 Q. Right.
 13 A. I'm just trying to get a general feel
 14 for what these categories are before I go back
 15 and answer your question.
 16 Okay. So there's a lot of categories
 17 here. So we've got some -- these are some
 18 summaries, I think. All right. We're not going
 19 to go with the dog kennel, forget dog kennel.
 20 All right. Let me start with account
 21 type, 77, where I'm in row --
 22 Q. 373?
 23 A. -- 373. And these would be the form
 24 of expenditures that would be in the fixed

1 category.
 2 Q. You say "these," referring to what?
 3 A. 373.
 4 Q. Okay. How do you know that?
 5 A. This is my recollection. I'm going to
 6 be --
 7 Q. It's your recollection of the
 8 treatment you gave it?
 9 A. That's correct.
 10 Q. Okay. But when you were first
 11 deciding what treatment to give it, how did you
 12 know what bucket to put it in?
 13 A. Well, this was the process we
 14 discussed earlier. Some of these will be, I
 15 think, best regarded as fixed, things like
 16 building rental, that kind of -- it's a pretty
 17 big expense category. That would always be in
 18 the fixed category. I'm not going to be
 19 100 percent. If you go back to whatever was
 20 produced for you and say, well, I'm
 21 Professor McGuire, you got that one wrong or
 22 that one wrong, I will get things wrong. But
 23 what I can tell you here is looking at these to
 24 give you a sense of how it was done and what

1 some of the allocation decisions were made.
 2 Q. Why would you get it wrong if we went
 3 through line by line right now?
 4 A. Well, I just don't guarantee with
 5 going through 100 categories here. Then it's
 6 kind of a memory test which I won't get
 7 100 percent on.
 8 Q. But I thought you said that there were
 9 a number of categories where you've looked at
 10 the account title, you could use your judgment,
 11 and you were very confident you didn't need any
 12 discussion, you didn't need to follow up with
 13 anyone at Summit County, right?
 14 MR. SOBOL: Objection.
 15 A. Well, I remember that discussion, yes.
 16 BY MR. KEYES:
 17 Q. So if it's so clear, then why would
 18 you get it one way when you did it before and
 19 get it a different way now?
 20 MR. SOBOL: Objection. Misstates his
 21 testimony.
 22 A. I'll get some right. I'm not saying I
 23 won't get many, but I'm only saying I won't get
 24 100 percent right. And the reason being is

1 that, you know, it wasn't an operation that,
 2 okay, Professor McGuire, you have a few minutes
 3 now, take a look at this spreadsheet that I
 4 haven't seen for months and tell me which goes
 5 into which category. It was a more extended, I
 6 would say, thoughtful and in some case
 7 team-based decision about where some of these
 8 things would go. So I'll do the best I can
 9 sitting here today.
 10 Would it be helpful, then, for me to
 11 keep going in these account types? I'm not sure
 12 whether I'm helping you or not.
 13 BY MR. KEYES:
 14 Q. Well, I'd like to understand, now that
 15 you've seen the document -- before you said you
 16 didn't remember what that Bates number referred
 17 to. Now that you've seen the document and you
 18 see the way it's laid out, explain to me how you
 19 could make a determination for each account
 20 based just on the account title, or whether
 21 there are specific accounts you can identify
 22 that would require more homework, discussion
 23 among your team at Compass Lexecon and then
 24 obviously following up with someone at county

1 personnel who can explain what these accounts
2 even cover.

3 MR. SOBOL: Objection.

4 BY MR. KEYES:

5 Q. So I'm not trying to quiz you about
6 any particular line.

7 A. I understand.

8 Q. I'm trying to understand the process.

9 A. All right. I think I understand.

10 The process is something similar to
11 what we're doing now in which I examine these
12 budget documents, some of which were in Excel,
13 some of which were hard copies, and made a
14 judgment about where some of these things would
15 go, and then, you know, worked with my team and
16 gathered further information and made a final
17 decision.

18 Q. I know you've said before that you
19 used your judgment. Well, what criteria are you
20 using? Is it an objective process, or is it
21 subjective where you reach the best you can
22 based on a conversation with your colleagues?

23 MR. SOBOL: Objection.

24 A. Well, I think it's a reasonable

1 process. Publications, fixed. Equipment,
2 fixed. Data processing, fixed. Research
3 project equipment, fixed. Anything like
4 miscellaneous, I'm not going to throw it into
5 the variable category.

6 BY MR. KEYES:

7 Q. Could you go to Children and Family
8 Services, then, within this document?

9 A. Give me a row there.

10 Q. I don't have a row. Can you find it
11 using this document?

12 A. Oh, gosh. This is a very long
13 document.

14 Does anybody know the answer here in
15 the room? Give me a hint.

16 MR. SOBOL: Why don't you "control F
17 family" and see if that helps.

18 THE WITNESS: I'm not so good at these
19 sort of things, Tom.

20 MR. PENDELL: Take your time.

21 A. Okay. I got it.

22 MR. SOBOL: Even I want this to move
23 along.

24 A. "Casey family expenditures."

1 MR. SOBOL: Go "find next."

2 THE WITNESS: Maybe this is the family
3 services, Tom.

4 MR. SOBOL: Sorry.

5 THE WITNESS: I need to check.

6 MR. KEYES: I appreciate you want to
7 speed it, but I'd like to know what he can do
8 with this Excel spreadsheet and what he can't,
9 not what lawyers can instruct him to do.

10 (Whereupon, McGuire Exhibit Number 2
11 was marked for identification.)

12 BY MR. KEYES:

13 Q. If you can't, you can't.

14 A. Well, you're watching it, it's on
15 video.

16 Q. Okay. Can you minimize this file for
17 the moment? Can you close out this little box?

18 A. Up there?

19 Q. No, in the middle of the screen, can
20 you close it out, the search box?

21 A. Yes.

22 Q. And then can you go to the upper
23 right-hand corner and minimize this file?

24 Okay. Now what's on the screen is a

1 native version of an Excel spreadsheet that was
2 produced by Cuyahoga County, and the Bates
3 number at the top of the screen is
4 CUYAH_014627783.

5 A. Right.

6 Q. Do you see that?

7 A. Yeah.

8 Q. Then if you'd go back to your report
9 to footnote 82.

10 A. Yes.

11 Q. Are you there?

12 A. I am.

13 Q. Do you see that's the same Bates
14 number that you referenced in footnote 82 as
15 being the detailed expenditure data for Cuyahoga
16 County that you obtained from the Cuyahoga
17 County budget? Okay?

18 A. I see that, yes.

19 Q. Same question. Does this refresh your
20 recollection as to what the expenditure data
21 that you reference in your report looks like?

22 A. Yes.

23 MR. SOBOL: Objection. Form.

24 BY MR. KEYES:

1 Q. Did you look at this Excel spreadsheet
2 yourself, or did you delegate that to others?
3 A. It would have been both.
4 Q. Did you go through account by account
5 to identify affected costs, and then for
6 affected costs whether they were overhead or
7 non-overhead?
8 A. I did.
9 Q. How did you do that for this data for
10 Cuyahoga County?
11 A. Well, the process is the same.
12 Also "county executive," that's not a
13 good example for an affected division. "County
14 law department." I'm finding it a little
15 difficult to give you complete answers to your
16 questions without information to remind me about
17 the functions of these departments.
18 Q. But what information did you have at
19 your fingertips when you first went through this
20 spreadsheet, when you first did this sorting
21 between affected and non-affected and the
22 sorting between overhead and non-overhead?
23 A. It was information about the
24 activities of the units that would help me make

1 a determination of compensation costs, for
2 example, which is the -- usually the biggest
3 category.
4 Q. What was the source of this other
5 information that you used to help you in this
6 sorting process?
7 A. Statements about the activities that
8 the division undertakes.
9 Q. Statements from -- in what document?
10 Where did you get those statements?
11 A. These are also in budget and --
12 Q. The annual budget documents for the
13 county?
14 A. I believe that's what they're referred
15 to, yes.
16 Q. Showing you what has been marked as
17 McGuire Exhibit Number 3.
18 (Whereupon, McGuire Exhibit Number 3
19 was marked for identification.)
20 MR. SOBOL: Perhaps I dosed off, was
21 the spreadsheet, both of those spreadsheets
22 Number 2?
23 MR. KEYES: Yes, we'll put a slip
24 sheet in and mark them.

1 BY MR. KEYES:
2 Q. Okay. Do you recognize McGuire
3 Exhibit 3?
4 A. This is the kind of thing I looked at,
5 yeah.
6 Q. The kind of thing, or the thing you
7 did look at?
8 This is the operating budget for 2017
9 for Summit County, correct?
10 A. Yes. There were a series of these. I
11 looked at for both counties.
12 Q. Okay. And so when you say "a series,"
13 you mean one for each year?
14 A. Yes.
15 Q. So you would have looked at the
16 operating budget for Summit County from 2006
17 through 2018?
18 A. Yes.
19 Q. And same thing for Cuyahoga County, an
20 annual operating budget from 2006 to 2018?
21 A. Yes.
22 Q. Okay. So you've referenced using this
23 document to help you identify what the affected
24 divisions were, and within the affected

1 divisions what the affected costs were, correct?
2 A. Yes.
3 Q. Can you identify for me where in the
4 operating budget you were able to identify which
5 are the affected divisions?
6 A. I won't go through page by page, I
7 promise.
8 MR. SOBOL: Well, then how are you
9 going to answer the question?
10 A. All right. So, for example, medical
11 examiner is in a -- the table of contents.
12 BY MR. KEYES:
13 Q. What page are you on?
14 A. I'm still on the table of contents
15 here.
16 Q. What's the Bates number at the bottom
17 so we have a clean record?
18 A. This is SUMMIT, and then 000007557 is
19 the table of contents that identifies where
20 information in this bigger document rests with
21 respect to the different divisions.
22 Q. Okay.
23 A. And so this is the kind of thing I
24 would do, say okay, medical examiner looks like

1 it could be a possibility.

2 Q. So then would you go to the Pages 195

3 to 198 for medical examiner?

4 A. Yes.

5 Q. Okay. Can you take us to Pages 195

6 through 198?

7 A. That's what I'm doing.

8 Okay. On Page 196 of the budget

9 document that has a Bates number -- do you want

10 me to read the Bates number?

11 Q. SUMMIT_7746?

12 A. Yes.

13 Q. Okay.

14 A. On that page there's a program

15 description which indicates the activities of

16 medical examiner office, which is to provide

17 quality forensic death investigation services

18 when persons die suddenly, unexpectedly, which

19 is the case in some opioid-related deaths. So

20 the medical examiner will be spending some

21 resources dealing with opioid-related deaths.

22 Q. So based on this program description

23 on Page 196, you then said the Office of Medical

24 Examiner is an affected division for Summit

1 County?

2 A. It's a potentially -- so it's -- so

3 McGuire is looking at it. McGuire looks at the

4 functions, seems like reasonable, then if it's

5 somehow in doubt, which I don't think this in

6 particular is in doubt, what the medical

7 examiner might be doing with respect to opioids.

8 And if confirmation is needed, then confirmation

9 is needed. But this is the kind of indication

10 of the activities of this particular division

11 which I took to be this is a likely affected

12 division.

13 Q. Was confirmation needed for the Office

14 of Medical Examiner for Summit County?

15 A. Well, it's -- I don't -- I feel

16 confident this would be correct. I don't -- I

17 don't recall. I'm sure I talked to Compass Lex

18 about this, but I don't recall whether there was

19 any confirmation beyond that.

20 Q. Was there anything else in this

21 description of the Office of Medical Examiner

22 within this operating budget that allowed you to

23 either identify it as an affected division or

24 confirm your belief that it was affected

1 division?

2 A. Let me see. I think that was what I

3 needed in this case.

4 Q. Okay. Then sticking with the Office

5 of the Medical Examiner example, while you have

6 it in front of you, did you use this document to

7 also identify whether costs were affected or not

8 affected?

9 A. This is the kind of document, so again

10 I -- my memory will be a little bit uncertain,

11 but here are staff information of what the

12 functions of different staff are. This is on

13 7747.

14 The next page, 7748, it gives

15 information about the general nature of

16 services.

17 Q. Back on 7747, what tells you the

18 function of any position?

19 A. Well, there's a description of the

20 job.

21 Q. Okay.

22 A. Chief deputy medical examiner. That

23 person, I infer, is a medical examiner, forensic

24 investigator.

1 Q. So you would infer from the titles.

2 There's no narrative to this that describes the

3 function of any particular position, correct?

4 A. In this document I don't see one. I

5 don't remember whether there was other documents

6 that might have helped with that.

7 Q. Okay. So for the Office of Medical

8 Examiner for Summit County, you read the program

9 description. You believed that it was an

10 affected division.

11 How, if at all, did you use these

12 pages to identify specific accounts for the

13 Office of Medical Examiner that were affected

14 costs?

15 A. Okay. These are -- I think you should

16 think of them as potentially affected costs.

17 But it involves this allocation between costs

18 that were unlikely to be affected and those that

19 are likely to be affected by the degree of harm

20 in opioid. I think we're talking about the same

21 thing.

22 And what I did was to take a category

23 like salaries, employees, and go back to the job

24 descriptions and make a determination of which

1 of these employees was in each of those two
 2 categories. And this is referred to in my
 3 report as the overhead adjustment to
 4 compensation costs.

5 Q. Okay.

6 A. Very briefly, in the example we went
 7 through this morning there was compensation
 8 costs. That would be compensation costs, but
 9 all compensation costs shouldn't be counted.
 10 The ones that have to do -- that are fixed or
 11 with overhead are not counted, and that's
 12 referred to as the overhead adjustment here.
 13 That's expressed in percentage terms.

14 Q. Sticking with the list of positions in
 15 the Office of Medical Examiner that are on
 16 Page 197 of this budget document, which of those
 17 did you treat as overhead, and which of those
 18 did you treat as non-overhead?

19 A. Okay. The approach I took to doing
 20 this would have classified sort of the first
 21 batch as potentially affected, and things like
 22 secretarial, senior administrative, support
 23 services administrator, they would have been put
 24 into the overhead category.

1 Now, again, I want to acknowledge that
 2 if you go back to my report and see what exactly
 3 did Professor McGuire do, there's going to be
 4 some slippage for the scores of departments and
 5 scores of years, scores of categories. But I
 6 didn't do it on the fly. I didn't do it in a
 7 short time frame like this, but that was the
 8 general approach.

9 Q. Okay. And did you use any other
 10 documents, then, besides the expenditure data we
 11 saw on the laptop in the Excel file and these
 12 annual operating budgets?

13 MR. SOBOL: Objection. Asked and
 14 answered.

15 A. I remember looking at some documents
 16 that had detail on the salaries of different
 17 personnel. I just don't remember whether they
 18 were Cuyahoga or whether they were Summit.

19 BY MR. KEYES:

20 Q. Anything else? I'm trying to
 21 understand the universe of documents you looked
 22 at and consulted in order to identify affected
 23 costs versus non-affected costs, overhead costs
 24 versus non-overhead costs.

1 You've identified the detailed
 2 expenditure data, which is the Excel
 3 spreadsheets on the computer. You've identified
 4 these operating budgets, and we just went
 5 through a sample of that exercise. And I asked
 6 you whether there's anything else, and you said
 7 that you remember there was some detail on
 8 salaries, but you don't know where that data is.

9 A. But I don't remember what exactly that
 10 applied.

11 Q. Okay. So besides those three sets of
 12 documents, did you look at anything else as part
 13 of this exercise?

14 A. I very likely did, but I don't
 15 remember what it would be as I sit here today.

16 Q. Did you consider any other approach to
 17 quantifying damages in this case besides your
 18 opportunity cost approach?

19 MR. SOBOL: Objection.

20 You may answer.

21 A. Well, the opportunity cost is so
 22 natural. No, I don't think so.

23 BY MR. KEYES:

24 Q. And have you used that opportunity

1 cost approach in any other case where you were a
 2 testifying expert quantifying damages?

3 A. It's really implicit in using
 4 expenditures as a quantification of damages.
 5 That's the whole idea of doing it that way.

6 Q. Did you use someone else's internal
 7 costs to identify opportunity costs, and then
 8 use those opportunity costs as damages in any
 9 other case where you've been a testifying
 10 expert?

11 A. The application of opportunity costs
 12 that comes to mind in other contexts of damages
 13 would have been from the standpoint of a
 14 purchaser, extra money that someone has to spend
 15 because of something. It's an opportunity cost
 16 concept still.

17 Q. Did you consider using an incremental
 18 cost approach in this case?

19 A. I'm not sure what you mean by that.

20 Q. Have you heard of incremental cost
 21 approach before to calculating damages?

22 A. I have heard of incremental cost many
 23 times, but it can be used differently in
 24 different contexts.

1 Q. Okay. So in the context of
2 quantifying damages, have you ever seen someone
3 use an incremental cost approach?
4 A. I don't recall.
5 Q. Have you ever seen someone compare
6 what the incremental costs are as a result of
7 something relative to what the costs would be
8 absent that something?
9 A. Well, I think that's often a good
10 question of what are the costs but-for
11 something, and that could well be called
12 incremental costs. Maybe that's how you're
13 using it.
14 Q. Well, do you agree that when you're
15 quantifying damages you're supposed to compare
16 the world as it is versus the world as it would
17 be absent the conduct being challenged?
18 A. Well, I'd say, broadly speaking, that
19 makes sense to me. In this case my instructions
20 from counsel were to quantify the costs to the
21 bellwether governments due to the opioid crisis,
22 and that would be regarded as damages.
23 Q. You were told that that would be
24 called damages in your report, right?

1 MR. SOBOL: Objection.
2 A. This is in the front page. I probably
3 should get this wording correct, but let me just
4 double-check.
5 BY MR. KEYES:
6 Q. If you'd like some help, it's on
7 Page 4. It's the end of Paragraph 6.
8 A. Okay.
9 Q. You say, "Finally, upon instruction
10 from counsel, I refer to the cost consequences
11 of harms to the Bellwether governments due to
12 defendants' misconduct as damages," right?
13 A. That's what I was looking for.
14 Q. That was the instruction you were
15 given?
16 A. That was the instruction I was given,
17 yes.
18 Q. And so you were told by counsel to
19 refer to the cost consequences as damages?
20 A. Yes, that's what the sentence says.
21 Q. And the cost consequences you're
22 talking about are the opportunity costs of
23 spending dollars on something related to opioids
24 versus something else?

1 A. Broadly speaking.
2 Q. So did you attempt to identify any
3 additional dollars that either Summit County or
4 Cuyahoga County spent because of the opioid
5 crisis that it would not have spent absent the
6 opioid crisis?
7 MR. SOBOL: Objection.
8 A. Well, embedded in my approach here,
9 any such dollars would have been captured.
10 For example, suppose the budget of the
11 medical examiner was deemed to be insufficient
12 because of the opioid crisis, and that budget
13 allocation was increased by the county, I would
14 see that, and I would count that.
15 BY MR. KEYES:
16 Q. I understand you would count that.
17 I'm not asking about different ways an existing
18 set of dollars were spent.
19 I'm asking, did you identify any
20 dollars that Summit County or Cuyahoga County
21 spent because of the opioid crisis that it would
22 not have spent absent the opioid crisis?
23 A. Well, as I explained, to the degree
24 that that happened, in the example of in the

1 absence of the opioid crisis they might not have
2 directed additional funds to the medical
3 examiner office, so the medical examiner's
4 budget did go up as a result of the opioid
5 crisis. I'm giving you this as an example.
6 Then the degree to which the expenditure was
7 devoted to opioids that are a component of that
8 are captured in my analysis, as well as, as well
9 as any expenditures that are taken from other
10 things the examiner would have otherwise done.
11 Q. But you're bringing it down to a
12 division level. I'm asking at the county level.
13 A. At the county level?
14 Q. Yes. Did Summit County or Cuyahoga
15 County spend any additional dollars because of
16 the opioid crisis that they would not have spent
17 absent the opioid crisis?
18 MR. SOBOL: Objection.
19 A. That's a very difficult counterfactual
20 for me. Since I do work at the division level,
21 which is where the method we've been talking
22 about is properly applied, it might be that, I
23 don't know, some additional borrowing, some
24 additional revenue.

1 What matters is where it's spent and
 2 how it's spent, not the source of the revenue.
 3 So I capture that in the method I've been
 4 talking about.
 5 BY MR. KEYES:
 6 Q. Okay. You're not engaging in the
 7 question I asked.
 8 If Cuyahoga County had \$100, you're
 9 saying that it might have spent those \$100
 10 differently because of the opioid crisis
 11 relative to what it would have done absent the
 12 opioid crisis, right?
 13 A. That's the kind of reasoning that I'm
 14 applying, yes.
 15 Q. Did you identify any instance where
 16 because of the opioid crisis Summit County or
 17 Cuyahoga County spent more than \$100, whereas
 18 absent the opioid crisis it would have only
 19 spent \$100?
 20 MR. SOBOL: Objection.
 21 A. See, my job here is to identify the
 22 costs to the counties that take the form of
 23 additional spending in divisions due to the
 24 presence of the opioid problem.

1 BY MR. KEYES:
 2 Q. Additional spending on the division
 3 level.
 4 A. I shouldn't have said additional. Let
 5 me strike additional.
 6 Q. Because it's not additional.
 7 A. See, it may or may not be additional.
 8 Q. Do you know one way or the other?
 9 A. The -- what I'm answering is that I
 10 capture both. So the degree to which there's
 11 more given to a division that wouldn't have
 12 otherwise been given in the absence of the
 13 opioid crisis, which I think is the point of
 14 your hypothetical, if they spend it on
 15 opioid-related problems, then I'm going to count
 16 it. It's the same opportunity cost as if they
 17 took the money from something else the police
 18 chief was doing.
 19 Q. But it's an opportunity cost; it's not
 20 an additional dollar spent by either county
 21 relative to what it would have spent absent the
 22 opioid crisis?
 23 MR. SOBOL: Objection.
 24 A. I wouldn't make that distinction.

1 They're both opportunity costs, whether the
 2 dollars come from additional taxes or whether
 3 they come from diversion.
 4 BY MR. KEYES:
 5 Q. But you looked at one and not the
 6 other?
 7 A. I looked at both. That's what I need
 8 to do, to look at both together. By looking at
 9 a budget of a division and what share of that
 10 budget goes to different kind of activities, to
 11 the degree that budget is going up for some
 12 reason, then I'm able to capture that in the
 13 accounting I did.
 14 Q. Right.
 15 And you capture it as an opportunity
 16 cost because those dollars -- those additional
 17 dollars are spent by that division rather than
 18 someone else within the county, right?
 19 A. Well, the general approach in
 20 economics is opportunity cost, so I don't know
 21 if you're trying to establish some spending does
 22 not have an opportunity cost.
 23 Q. No, I'm trying to identify whether
 24 there are incremental costs at the county level

1 because of the opioid crisis, not whether the
 2 existing pie was divvied up different ways, but
 3 whether the pie chart that reflects spending is
 4 bigger because of the opioid crisis. Did you do
 5 that?
 6 MR. SOBOL: Objection. Asked and
 7 answered several times.
 8 A. What I did was fulfill my assignment,
 9 which required me to consider both of those
 10 sources of funds devoted to the opioid crisis.
 11 It need not only be a matter of reallocation of
 12 existing resources. Some budgets of some
 13 divisions may have been increased due to the
 14 opioid crisis. That's, I think, the spirit of
 15 what you're asking.
 16 And to the degree that happened and
 17 the degree to which those were devoted to
 18 opioids, then I count them, as I should.
 19 BY MR. KEYES:
 20 Q. In 2006, how much less would Summit
 21 County or Cuyahoga County have spent if there
 22 had been no opioid crisis compared to what it
 23 did spend?
 24 MR. SOBOL: Objection. Asked and

1 answered several times.

2 BY MR. KEYES:

3 Q. Total dollars.

4 MR. SOBOL: Objection. Asked and

5 answered several times.

6 A. The answer I have for that is the

7 spending at the division level on services

8 related to opioids, which had that been freed

9 up, which I think is the nature of your

10 question.

11 BY MR. KEYES:

12 Q. You keep talking about the division

13 level. I didn't ask about the division level.

14 I asked on the county level, in 2006,

15 how much less would Summit County or Cuyahoga

16 County have spent if there had been no opioid

17 crisis compared to what it did spend that year?

18 MR. SOBOL: Objection. Asked and

19 answered.

20 A. This is kind of the inverse of your

21 earlier question. Now we're taking the opioid

22 crisis away, and we're freeing up funds that

23 also have these two destinations. Previously I

24 talked about this in terms of sources to say

1 that the sources of funds could either be

2 diversion or new funds, and I want to count both

3 of those with respect to quantifying the

4 opportunity cost of spending on opioids.

5 Now the question is kind of the

6 opposite, suppose you take the opioids spending

7 away, there's two destinations for those funds.

8 They could be in some kind of reallocation in

9 which they went to other services that the

10 county provided, or they could also be

11 associated with a fall in the total budget of

12 the county.

13 So it's really the same answer in

14 reverse, that -- and it's kind of the forward

15 direction, yes, I want to count both, I do count

16 both. In the backward direction, the amount I

17 want to take away, it could be diverted or it

18 could have led to fewer revenue collections for

19 the county.

20 BY MR. KEYES:

21 Q. Referring you again to the last three

22 charts in your report, it's Tables IV.12, IV.13

23 and IV.14.

24 A. Okay.

1 Q. Are you there?

2 A. Yes.

3 Q. These are the damages you calculated?

4 A. Yes.

5 Q. And these are the only damages you

6 calculated in this engagement on damages,

7 correct?

8 A. That's correct.

9 Q. Okay. The dollars that you say are

10 total dollars are dollars that you say would

11 have been spent by the bellwether governments on

12 something else if there was no opioid problem,

13 correct?

14 A. Is that a quote from me?

15 MR. SOBOL: Objection.

16 BY MR. KEYES:

17 Q. No, I think that's what you've been

18 saying. It's not a quote.

19 MR. SOBOL: Objection.

20 BY MR. KEYES:

21 Q. Is it accurate to say that the dollars

22 that you say are total damages are dollars that

23 would have been spent by Summit County or

24 Cuyahoga County on something else if there was

1 no opioid problem?

2 MR. SOBOL: Objection.

3 A. All right. We've been talking about

4 this the last few minutes, and I think I've

5 clarified that the dollars spent on the opioid

6 crisis could be taken from other activities in

7 that division, or even conceivably activities of

8 some other division, or could be associated with

9 increased budgets of the affected divisions, and

10 both of those are opportunity costs, both of

11 those should be counted, and I count both of

12 them. So I...

13 BY MR. KEYES:

14 Q. Are you offering an opinion that if

15 there had been no opioid problem the dollars you

16 list as total damages would not have been spent

17 by the Summit and Cuyahoga Counties?

18 MR. SOBOL: Objection. Asked and

19 answered.

20 A. That's not my testimony.

21 BY MR. KEYES:

22 Q. Are you offering the opinion that the

23 dollars that you describe as total damages are

24 monies that the bellwether government spent only

1 because of the opioid problem?

2 MR. SOBOL: Objection. Asked and

3 answered.

4 A. That's also not an accurate statement.

5 BY MR. KEYES:

6 Q. So you are not offering that opinion,

7 correct?

8 MR. SOBOL: Objection.

9 A. That's an inaccurate statement.

10 BY MR. KEYES:

11 Q. Did you examine what dollars Summit

12 County or Cuyahoga County spent in excess of

13 their budgets because of the opioid problem?

14 MR. SOBOL: Objection. Same, that's

15 his answer.

16 A. This is a version of the earlier

17 discussion, and any, any additional funding for

18 a division that may have come from going over

19 budget, which I have a general understanding of

20 what that would imply, are properly counted, and

21 yes, I counted them as part of my cost analysis.

22 BY MR. KEYES:

23 Q. Did you examine what dollars Summit

24 County or Cuyahoga County spent in excess of

1 their budgets because of the opioid problem?

2 MR. SOBOL: Objection. Asked and

3 answered.

4 A. My accounting of funds included funds

5 that would have been diverted from some other

6 use, and any additional funds that would be

7 coming from funds over budget that were devoted

8 to the opioid crisis.

9 BY MR. KEYES:

10 Q. Where in your report do you identify

11 the dollars that Summit County or Cuyahoga

12 County spent in excess of their budgets because

13 of the opioid problem?

14 A. That's not necessary for me to do, to

15 be able to count the opportunity costs of

16 dealing with the opioid crisis.

17 Q. Okay. So did you -- do you set forth

18 anywhere from your report a quantification of

19 the dollars that Summit County or Cuyahoga

20 County spent in excess of their budgets because

21 of the opioid problem?

22 A. What I did is take the total

23 opportunity cost, which could have come from

24 different sources, as I've said a number of

1 times in the last few minutes, additional

2 budgets from alternative additional budget

3 sources including unanticipated spending or

4 other additional budget sources and from

5 anything that takes the form of diversion.

6 Q. Your answer says "could have come from

7 different sources." You're acknowledging the

8 possibility, right?

9 MR. SOBOL: Objection.

10 BY MR. KEYES:

11 Q. "Could have come from other sources."

12 MR. SOBOL: Objection.

13 A. Maybe ask a question so I'm

14 understanding what I'm answering.

15 BY MR. KEYES:

16 Q. I'm not asking whether some of the

17 dollars somewhere in your quantification might

18 have come from somewhere else.

19 I'm asking you, do you set forth

20 anywhere in your report a quantification of the

21 dollars that Summit County or Cuyahoga County

22 spent in excess of their budgets because of the

23 opioid problem?

24 MR. SOBOL: Objection. Asked and

1 answered.

2 A. I didn't need to identify any sources

3 of additional budgets for divisions in order to

4 make a quantification of the opportunity cost of

5 the funds.

6 BY MR. KEYES:

7 Q. Do you set forth anywhere in your

8 report a quantification of the dollars that

9 Summit County or Cuyahoga County spent in excess

10 of their budgets because of the defendants'

11 conduct?

12 MR. SOBOL: Objection.

13 I think you just asked that question.

14 MR. KEYES: No, I asked because of the

15 opioid problem. This one is because of the

16 defendants' conduct.

17 A. This is new.

18 Yes, I do.

19 BY MR. KEYES:

20 Q. And so show me --

21 A. I'm sorry.

22 Q. Yeah, you keep saying I don't need to,

23 so I thought you were going to say --

24 A. I forgot the first part of your

1 question, so --

2 Q. Let me ask it again.

3 A. Thank you.

4 Q. Do you set forth anywhere in your

5 report a quantification of the dollars that

6 Summit County or Cuyahoga County spent in excess

7 of their budgets because of the defendants'

8 conduct?

9 MR. SOBOL: Objection. Asked and

10 answered.

11 A. There is a similar answer to the

12 question, even though it's a different question.

13 I realize it's a different question.

14 BY MR. KEYES:

15 Q. You're going to tell me you didn't

16 need to.

17 A. I'm going to tell you that --

18 MR. SOBOL: Why are you asking the

19 questions if you know the answers?

20 MR. KEYES: Because he won't give me a

21 yes-or-no answer.

22 BY MR. KEYES:

23 Q. I know you won't.

24 A. I lost my train of thought. So in

1 order to --

2 Q. It's a yes-or-no question.

3 MR. SOBOL: He has to remember what

4 the question was.

5 BY MR. KEYES:

6 Q. Well, it's a yes-or-no question. I

7 appreciate you being candid in saying you're not

8 going to give me a yes-or-no answer. I think

9 the record bears it out today, even though it's

10 a yes-or-no question. But I'm going to ask it

11 of you, and I'm going to ask for your answer.

12 Do you set out anywhere in your report

13 a quantification of the dollars that Summit

14 County or Cuyahoga County spent in excess of

15 their budget because of the defendants' conduct?

16 MR. SOBOL: Objection. Asked and

17 answered.

18 A. Such funds would be reflected in the

19 budgets that I looked at by division and

20 allocated to defendants' misconduct.

21 BY MR. KEYES:

22 Q. So tell me where in your report I go

23 to find that, to find the dollars that Summit

24 County or Cuyahoga County spent in excess of

1 their budgets because of the defendants'

2 conduct.

3 A. I didn't need to make that

4 quantification.

5 Q. Did you study what the normal costs

6 are to be incurred by Summit County or Cuyahoga

7 County because of opioids?

8 A. The normal costs. I'm sorry, what

9 might you mean by "normal costs"?

10 Q. The typical or ordinary costs in a

11 given year.

12 A. I studied costs. I didn't try to

13 determine what was typical.

14 Q. Or normal or ordinary, correct?

15 A. I would have a hard time interpreting

16 that from an economic standpoint.

17 Q. Did you identify any costs that were

18 incurred by Summit County or Cuyahoga County

19 because it was participating in the marketplace?

20 A. I'm sorry, I don't understand what

21 you're getting at.

22 Q. Did you attempt to identify or

23 quantify costs that were incurred by Summit

24 County or Cuyahoga County participating in the

1 marketplace and having to spend money in the

2 marketplace?

3 MR. SOBOL: Objection.

4 BY MR. KEYES:

5 Q. Perhaps be overcharged.

6 MR. SOBOL: Objection.

7 A. I don't think I get your question.

8 But just to move along a little bit, the cost

9 components of the division that we discussed

10 earlier are payments to what an economist would

11 call resources that are traded in, for example,

12 labor markets, so yes.

13 BY MR. KEYES:

14 Q. Did you attempt to identify instances

15 where Cuyahoga County or Summit County was

16 overcharged in the marketplace?

17 A. Overcharged.

18 MR. SOBOL: Objection.

19 A. Help me by defining what overcharge

20 is, what you mean by overcharge.

21 BY MR. KEYES:

22 Q. Well, you told me this morning that

23 you've calculated overpayments as an expert in

24 other cases before, right?

1 A. Yes.

2 Q. So paying more than someone says is

3 the right benchmark. Right?

4 A. Well, normally the right benchmark is

5 a competitive price.

6 Q. Okay. So if we use a competitive

7 price, did you undertake to identify any costs

8 that were incurred by Summit County or Cuyahoga

9 County by spending money in the marketplace

10 above a competitive price?

11 A. Let me tell you why I didn't need to

12 do that.

13 Q. Well, first just say yes or no. You

14 can say no, and then you can tell me why you

15 didn't need to do it. I know you've been

16 trained in your years to never say no, but

17 you're essentially saying no every time you say

18 "I don't need to."

19 For the sake of a clean record, can

20 you say, no, I didn't do that, and here's why I

21 didn't need to?

22 MR. SOBOL: Objection.

23 Whatever, go ahead.

24 BY MR. KEYES:

1 Q. Did you do that?

2 MR. SOBOL: Now, what's the question?

3 I was almost letting you go forward, and then

4 you did that.

5 BY MR. KEYES:

6 Q. Did you undertake to identify any

7 costs that were incurred by Summit County or

8 Cuyahoga County by spending money in the

9 marketplace above a competitive price?

10 MR. SOBOL: Objection.

11 You may answer.

12 A. This was irrelevant, and I'll explain

13 by example.

14 Suppose there were market power in the

15 labor market, and we're talking about, I don't

16 know, some category of workers that are able to

17 extract a wage that's above the competitive

18 wage, but the county has to pay this because

19 they -- well, they just have to pay it. They

20 pay it. It still has the same opportunity cost.

21 If I pay my \$75 and, oh, my gosh, the

22 auto repair company is a monopolist in my town

23 and the competitive price would have been \$35, I

24 end up paying \$75. It's the same, the same from

1 my standpoint. The opportunity cost is the

2 same.

3 BY MR. KEYES:

4 Q. In your report you claim that by

5 incurring opioid-related expenditures the

6 quality of other services provided by Summit

7 County and Cuyahoga County was reduced. Is that

8 your opinion?

9 A. In some cases that would be correct,

10 yes.

11 Q. Okay. So what other services are you

12 referring to such that the quality went down?

13 A. I think I discuss an example, maybe

14 two examples, of the quality of police services.

15 What do you mean by "the quality of police

16 services"? You mean things like response time?

17 You mean things like they're able to handle this

18 category of offense? You mean things like

19 officers have adequate time to pursue an

20 investigation, and the degree to which those

21 things are interfered with because of officer

22 time that needs to be devoted to the opioid

23 crisis? That's an effect on the quality of

24 police services.

1 I think the other example that I

2 mention somewhere in the report is Division of

3 Family Services, that if there's more children

4 who need attention because of the opioid crisis,

5 the parents are dying, the kids have to be taken

6 care of, there's other kids who would have been

7 referred to family services anyway, and there's

8 less time for those kids.

9 So in an important sense, much of what

10 public service is about is time. And to the

11 degree to which that time is interfered with by

12 anything in this case, the opioid crisis, it's a

13 deterioration in the quality of the public

14 services.

15 Q. Those are the two examples you had in

16 mind when you made that statement in your

17 report?

18 A. I believe those are examples that we

19 discussed in my report, or mentioned in my

20 report. The -- probably division by division it

21 would be, you know, because I already talked

22 about what kind of quality deterioration as

23 workers have less time to devote to other things

24 that would have been due to the opioid crisis.

1 Q. Did you measure the quality of the
2 police services provided by either Summit County
3 or Cuyahoga County?

4 A. This is one of those categories that
5 trusting the concept of opportunity cost, the
6 value of any reduced services is indicated by
7 the dollars devoted to opioids.

8 Q. So you have a theory of calculating
9 damages where the theory does it all. By
10 definition the theory gives you what you want.
11 You don't need to study the real world, you've
12 got the theory, right?

13 MR. SOBOL: Objection, objection,
14 objection, to each of the three questions.

15 A. I wouldn't put it that way, no.

16 BY MR. KEYES:

17 Q. Well --

18 MR. SOBOL: You don't even let me do
19 my objection thing.

20 THE WITNESS: Pardon me.

21 MR. SOBOL: You're not even letting me
22 do my objecting thing.

23 THE WITNESS: I'm trying to.

24 BY MR. KEYES:

1 Q. Did you study the quality of police
2 services before the opioid epidemic?

3 A. The --

4 Q. I don't want you to tell me in theory
5 what happens. I want to know whether you
6 actually studied it with respect to Summit
7 County or Cuyahoga County police.

8 A. You need to know and understand in
9 answering this question that the deterioration
10 and the time that police have to do things is
11 associated with a decline in that quality.
12 That's the thing that's important to me. That's
13 the thing -- if you want to call that an
14 assumption, all right, but that's the important
15 element that you need to understand in
16 understanding my answer to that question.

17 Q. Okay. So you think it's important for
18 me to know that.

19 Separate from that, did you measure
20 the quality of the police services before the
21 opioid crisis?

22 A. What dates are you talking about here?

23 Q. Well, before 2006.

24 A. My work began with spending in 2006,

1 so...

2 Q. Did you measure the quality of police
3 services in 2006 or any subsequent year?

4 A. Any subsequent year. I measured the
5 resources available for police services in those
6 years.

7 Q. That's not my question.

8 A. I know.

9 Q. Did you -- okay, well, if you know it,
10 then answer the question I'm posing.

11 My question is, did you measure the
12 quality of police services in 2006 or any
13 subsequent year?

14 A. See, this wasn't necessary for me to
15 conduct my assignment, so I didn't do that.

16 Q. Is it accurate to say that you never
17 measured the quality of police services for
18 Summit County or Cuyahoga County at any point
19 before 2006 -- in 2006 or any year after 2006?

20 A. The application of the theory of
21 opportunity cost didn't require me to do that.

22 Q. Did you measure the quality of the
23 services provided by the Department of family --
24 Children and Family Services at any point in

1 time?

2 A. It would have been the same answer.

3 Q. You didn't need to?

4 MR. SOBOL: Objection.

5 A. I didn't need to in order to identify
6 the opportunity cost of the funds devoted to
7 opioids.

8 BY MR. KEYES:

9 Q. Is it accurate to say that you never
10 measured the quality of services provided by the
11 Department of Children and Family Services for
12 Summit County or Cuyahoga County at any point
13 before 2006, in 2006, or any year after 2006?

14 MR. SOBOL: Objection. Asked and
15 answered, compound.

16 A. I think it's the same answer for
17 police, that it wasn't necessary for me to
18 fulfill my assignment.

19 BY MR. KEYES:

20 Q. And for any period of time from before
21 2006 through the present, have you measured any
22 or quantified any change in the quality of the
23 services provided by the police or the
24 Department of Children and Family Services?

1 MR. SOBOL: Objection. Asked and
2 answered.
3 A. What I studied was the resources
4 available to deal with other services. The
5 connection to quality is, I think, clear.
6 BY MR. KEYES:
7 Q. Not my question.
8 My question is, for any period of
9 time, have you measured or quantified any change
10 in the quality of the services provided by the
11 police or the Department of Children and Family
12 Services for either Summit County or Cuyahoga
13 County?
14 MR. SOBOL: Objection. Asked and
15 answered, compound.
16 A. My answer is the same, because I want
17 the reader of this to understand why it is, that
18 for me to identify the opportunity cost didn't
19 require me to make that quantification.
20 BY MR. KEYES:
21 Q. So you didn't do it?
22 MR. SOBOL: Objection. Asked and
23 answered.
24 BY MR. KEYES:

1 Q. I mean, typically when someone says
2 did you do X, the witness, particularly an
3 expert witness who has been through the drill
4 before, can say yes, I did, and no, I didn't,
5 and the reason I didn't is the following. You
6 won't even say yes or no. I don't know what
7 you're trying to muddle here. I just want a
8 clean answer to all these questions about did
9 you do this or not.
10 Do I understand, though, that every
11 time I've asked you did you do something and you
12 say it wasn't necessary, that means you didn't
13 do it?
14 MR. SOBOL: Objection. To which time
15 he said that?
16 A. Yeah, I would have to see what you're
17 talking about in that context.
18 MR. KEYES: Okay. Why don't we take a
19 break.
20 THE VIDEOGRAPHER: The time is
21 4:49 p.m., and we're off the record.
22 (Whereupon, a recess was taken.)
23 THE VIDEOGRAPHER: The time is
24 5:12 p.m., and we're on the record.

1 (Whereupon, McGuire Exhibit Number 4
2 was marked for identification.)
3 BY MR. KEYES:
4 Q. Professor McGuire, I'm showing you
5 what has been marked as McGuire Exhibit 4. Do
6 you know what this document is?
7 A. Yes.
8 Q. What is it?
9 A. It's the -- contains budget
10 information for the ADAMHS Board.
11 Q. For what period of time?
12 A. There's 2009 to -- 2009 to 2020.
13 Q. And it shows actuals for 2009 through
14 2017, correct?
15 A. That's correct.
16 Q. And then budgeted amounts from 2018
17 through 2020?
18 A. That's correct.
19 Q. Okay. And if you look at the bottom
20 of the chart, there's a line that says "Ending
21 Cash Balance."
22 Do you see that?
23 A. I do.
24 Q. What is the ending cash balance, as

1 you understand it, for the Summit County ADM
2 Board?
3 A. That would be how much money they have
4 available at the end of the year.
5 Q. So these are excess, unused funds as
6 of the end of each year?
7 A. Something like that. Well, they're
8 available for future years.
9 Q. So it's calculated as of the end of
10 each year, and it's the unused funds that are
11 available for expenditures going forward?
12 A. Yeah, something like that.
13 Q. And so those are funds that could be
14 spent on an unmet need?
15 A. Well, they could be spent on anything.
16 Q. Including whatever the ADM Board
17 identifies as an unmet need?
18 A. Yes. I mean, yes.
19 Q. And do you see that the excess funds
20 for the Summit County ADM Board as of the end of
21 2009 was 17.7 million?
22 A. I do see that, yes.
23 Q. It increased at the end of 2010 to
24 28.3 million?

1 A. Yes.

2 Q. Increased at the end of 2011 to

3 35.9 million?

4 A. Yes.

5 Q. And then increased in 2012 to

6 40.3 million?

7 A. Yes.

8 Q. Increased in 2013 to 41.2 million?

9 A. Yes.

10 Q. Increased to 45.8 million as of the

11 end of 2014?

12 A. Yes, I see.

13 Q. And then it was still around

14 \$48 million in 2015 and 2016?

15 A. I see that, yes.

16 Q. And in most of those years, the excess

17 funds were enough to cover an entire year's

18 worth of ADM Board expenses, correct?

19 A. Most of those years. Well, by the

20 time you get to 2013, the ending cash balance is

21 about the same as the annual total expenditures.

22 Q. Did the Summit ADM Board ever seek

23 authorization to spend the extra funds that are

24 reflected in the ending cash balance?

1 A. I'm not sure.

2 Q. Did you look into that?

3 A. My staff may have. I don't recall

4 looking into it myself.

5 Q. Do you know whether there was a

6 requirement for the fund balance for the Summit

7 ADM Board?

8 A. I'm not aware of any.

9 Q. Do you know whether there was any

10 requirement at all, separate from what that

11 requirement level was?

12 A. I'm not aware of the existence of one.

13 Q. So the ending cash balance identifies

14 the amount of money that was available to the

15 ADM Board to spend on other things if it wanted

16 to do so, correct?

17 A. Well, I'm not familiar with whatever

18 budget rules they have, but broadly speaking,

19 something like that would be correct.

20 Q. Can you go back to McGuire Exhibit 3,

21 which is the operating budget for 2017 for

22 Summit County?

23 A. Okay.

24 Q. And would you turn to page

1 SUMMIT_7600? Are you there?

2 A. I'm there.

3 Q. And the title of this page that's part

4 of the budget is "County of Summit 2017 Budget

5 Total Expenditures."

6 Do you see that?

7 A. I do.

8 Q. And it lists a series of funds, and

9 for each fund it shows what the adopted budget

10 is for 2017?

11 A. I see that.

12 Q. And do you see that there's a specific

13 line that shows the 2017 adopted budget for the

14 Alcohol, Drug & Mental Health Board for Summit

15 County?

16 A. I see that.

17 Q. And what's the amount that the Summit

18 County ADM Board could spend per the 2017

19 adopted budget?

20 A. According to this document, the entry

21 is \$47,729,340.

22 Q. Can you go back to McGuire Exhibit 4

23 which shows the actual expenditures for the

24 Summit County ADM Board?

1 A. I'm looking at that.

2 Q. And if you look in the column that

3 says "2017 Actual."

4 Do you see that?

5 A. I do.

6 Q. And if you go to the -- close to the

7 bottom it shows "Total Expenditures"?

8 A. I see that.

9 Q. What are the total expenditures by the

10 Summit ADM Board in 2017?

11 A. 45,430,368.

12 Q. Okay. So that's less than the amount

13 that it was authorized to spend in 2017,

14 correct?

15 A. It appears to be.

16 Q. By about \$2.3 million?

17 A. It appears to be.

18 Q. So in 2017, the Summit ADM Board

19 didn't even spend \$2.3 million that it was

20 authorized to spend on needs that it was charged

21 with addressing, correct?

22 MR. SOBOL: Objection.

23 A. Well, I think the arithmetic here is

24 all perfectly fine. Interpreting it in terms of

1 their behavior and so on, I'm not sure.

2 BY MR. KEYES:

3 Q. Well, it doesn't require any

4 interpretation of the behavior.

5 It shows that they were authorized to

6 spend 47.7 million, they only spent

7 45.4 million, which leaves 2.3 million, roughly,

8 in monies that were specifically authorized, put

9 into their budget that the ADM Board did not

10 spend that year, correct?

11 A. The gap between the budget and the

12 expenditures is, as you described, around

13 \$2 million.

14 Q. So these are dollars that the Summit

15 ADM Board could have spent on another need, but

16 didn't for whatever reason?

17 MR. SOBOL: Objection.

18 A. Well, that would be an assumption. I

19 don't know that for sure.

20 BY MR. KEYES:

21 Q. Going back to McGuire Exhibit

22 Number 3, same page. What did the Summit County

23 adopt as the 2017 budget for the Children's

24 Services Board?

1 A. This is 51,914,589.

2 (Whereupon, McGuire Exhibit Number 5

3 was marked for identification.)

4 BY MR. KEYES:

5 Q. Showing you what has been marked as

6 McGuire Exhibit 5. What is McGuire Exhibit 5?

7 A. It's the Summit County Children's

8 Services Operating Forecast as of December 31,

9 2018.

10 Q. And it's Bates number

11 SUMMIT_002057610, correct?

12 A. That's correct.

13 Q. And does it show the actual

14 expenditures for the Summit County Children's

15 Services Board in 2017?

16 A. It appears to, yes.

17 Q. And what is that amount for 2017?

18 A. That amount is 47,960,000.

19 Q. Whereas it was authorized to spend in

20 2017 51.9 million, it only spent 47.9 million,

21 correct?

22 A. Well, this is -- yeah, this is what

23 was budgeted. I'm just looking at the documents

24 and confirming what they appear to be.

1 Q. Right.

2 So one is the amount that it was

3 budgeted to spend for 2017, the other shows what

4 it actually spent in 2017, right?

5 A. That's true.

6 You know, we haven't talked about the

7 revenues. And in 2017, for example, the

8 Children's Services was running a deficit, and

9 I, you know, don't know without more

10 investigation whether the presence of that

11 deficit would have led to spending more than it

12 was budgeted.

13 Q. But comparing what it was authorized

14 to spend in the budget versus what it actually

15 spent in 2017, it did not spend roughly

16 \$3.9 million that it was authorized to spend on

17 the needs it was charged with addressing,

18 correct?

19 A. Well, I don't know that for sure.

20 This is budgeted. I'm not sure what may have

21 been authorized, what contingencies there might

22 have been on revenue with respect to that, so I

23 can only answer about what I see before me.

24 Q. Did you look into this kind of issue

1 to see whether any of the so-called affected

2 divisions had monies that were approved to spend

3 in a particular year that they did not spend?

4 MR. SOBOL: Objection.

5 A. This is another version of the -- what

6 I need to do in order to address my assignment.

7 These funds that are the ending balance carrying

8 forward can be used for other services as you

9 established, I think, in your preface to these

10 set of questions. They could be used for other

11 services next year or the year after that.

12 What is the value of those other

13 services? A good measure of that is the

14 dollars. So anything that takes away from or

15 diverts funds from other categories, including

16 the operating surplus or deficit, is measured by

17 opportunity cost.

18 BY MR. KEYES:

19 Q. Even if the ADM Board or the

20 Children's Services Board had additional dollars

21 available to it and did not spend them?

22 A. Well, I think the --

23 MR. SOBOL: Objection.

24 A. No, I'll just disagree with that.

1 BY MR. KEYES:
2 Q. On what basis?
3 A. It's not a sound economic -- not sound
4 economic logic. These funds have other
5 purposes, other potential uses.
6 Q. Aren't you positing that the dollars
7 that you've quantified as damages have an
8 opportunity cost because by being spent on
9 opioid-related services they were not available
10 to be spent on something else?
11 MR. SOBOL: Objection. Form.
12 A. Well, broadly speaking, there was the
13 diversion part, and any increase in spending
14 part due to the opioid crisis that would have
15 fed into the opportunity cost accounting.
16 BY MR. KEYES:
17 Q. So what basis do you have in fact for
18 positing that if those dollars were not spent on
19 opioid-related services, they, in fact, would
20 have been spent on something else when the
21 evidence we have is that these boards didn't
22 even spend the dollars they had?
23 A. Well, you're looking at a bunch of
24 categories that have to add up in the way that

1 we've been discussing. Could I say that if
2 whatever opioid-related expenditures were not
3 here, I would know that other would go up, or
4 paid placements would go up, or any of these
5 individual categories would change in any way,
6 including the last one we've been talking about,
7 which you have to consider that to be a change
8 in fund balance which is what might be affected
9 by any spending on opioids.
10 And the whole kind of emphasis of some
11 of our discussions earlier was that it's not
12 necessary for me to be able to determine where
13 that money came from in order to attribute the
14 opportunity cost of how the dollars I do.
15 Q. Do you agree a carry-forward balance
16 is fairly characterized as a surplus?
17 A. It sometimes -- at least in this
18 document the surplus is more of an annual flow
19 concept, whereas the balance is a stock concept.
20 But I'm not sure what you're then asking.
21 Q. My question is, when it refers to the
22 ending carry-forward balance here for Summit
23 County Children's Services in McGuire Exhibit 5,
24 could that fairly be characterized as a surplus

1 that existed as of year-end each year?
2 A. If you define "surplus" to be the
3 balance, this exhibit doesn't seem to use the
4 term that way. But I understand what you're
5 asking.
6 Q. So what's the answer? You said you
7 understand what I'm asking. Could the
8 carry-forward balance shown on McGuire Exhibit 5
9 be fairly characterized as a surplus that the
10 Summit County Children's Services had?
11 A. That's not the way the term is used in
12 this document.
13 Q. Did you look at any deposition
14 testimony from anyone who worked for Summit
15 County Children's Services about the ending
16 carry-forward balance?
17 A. Oh, I don't remember.
18 Q. And do you know what anyone who
19 actually worked for Summit County Children's
20 Services said about how the carry-forward
21 balance could be characterized?
22 A. I don't remember.
23 Q. Did you look?
24 A. I don't remember that either. I'm

1 sorry.
2 Q. I asked you earlier whether you had
3 ever testified using a theory of calculating
4 damages where internal costs were provable as
5 damages.
6 Do you remember that?
7 A. I don't remember the internal word,
8 but I do remember the general nature of the
9 question.
10 Q. And I think you responded that those
11 internal costs were similar, in your words, to
12 an increased purchase price.
13 A. I actually don't recall this, what I
14 was saying about that, so I'm sorry.
15 Q. Okay. Well, have you ever testified
16 as an expert in a case where you have quantified
17 damages as being the opportunity costs
18 associated with the expenditures of a
19 municipality?
20 A. Possibly. And what I mean by that is
21 there have been cases in which purchasers are
22 sometimes labor funds and may have been
23 government self-insured healthcare costs, but I
24 can't be sure.

1 Q. You say it may be. If you did, what
2 case or cases would that have been in?

3 A. That's what I can't tell you.

4 Q. So sitting here today, can you
5 identify any case where you've said that?

6 MR. SOBOL: Objection.

7 A. I can't tell you which case this would
8 have come up. I just don't remember.

9 BY MR. KEYES:

10 Q. Have you ever testified as an expert
11 where you claim that the internal compensation
12 costs of a municipality or a company were
13 claimed as damages as distinguished from
14 payments to an outside party?

15 A. Compensation costs are normally
16 considered to be wages and benefits, and the
17 degree to which this government entity, that I'm
18 not remembering the details about, was paying
19 for healthcare, that would be part of a
20 compensation to the workers. So in that sense,
21 yes.

22 Q. Did you treat those compensation costs
23 as damages?

24 A. They would have been spending -- extra

1 healthcare spending due to whatever it was, and
2 that would have been damages, yes.

3 Q. And were those dollars paid to the
4 employees or paid to third parties in connection
5 with employees?

6 A. They would have been paid to third
7 parties.

8 Q. Okay. So my question was about
9 internal compensation costs where you are paying
10 your own employees.

11 Have you ever testified as an expert
12 where those internal compensation costs, what
13 you're paying to employees, is claimed as
14 damages?

15 A. I have to ask you to clarify. By
16 "internal compensation cost," do you mean wages
17 only, or do you mean something else?

18 Q. Well, I mean any compensation paid to
19 employees.

20 A. Any compensation, so it includes
21 employer contribution to health insurance
22 premiums?

23 Q. Paid to employees, any compensation
24 paid to employees, not paid to third parties on

1 behalf of employees.

2 A. I can't think of anything. But this
3 gets to be a little bit of a gray area about
4 employer payments that have to do with
5 healthcare costs that take the form of extra
6 compensation for workers, so I'll leave it at
7 that.

8 Q. So your recollection is fuzzy as to
9 whether you've ever done this before?

10 A. I think fuzzy would be a perfectly
11 good word to characterize my recollection here.
12 This is something I may have done, but I can't
13 point to particular examples.

14 Q. Does Summit County pay reimbursements
15 for prescription opioids through their
16 healthcare plans for county employees?

17 A. Can you read me that again, please?

18 Q. Sure.

19 Does Summit County pay reimbursements
20 for prescription opioids through their
21 healthcare plans for county employees?

22 MR. SOBOL: Sorry. Objection.

23 Go ahead.

24 A. Reimbursements to whom?

1 BY MR. KEYES:

2 Q. Either the insurer or the employee.

3 A. It would be very unlikely to the
4 employee. Modern health insurance doesn't work
5 that way.

6 Q. Okay. Do you know what Summit County
7 does?

8 A. I do know some things about what
9 Summit County does.

10 Q. Okay. So tell me what it does.

11 A. There's more than one plan that
12 applies to employees in Summit County, and some
13 of the plans change over time, sometimes
14 different groups of workers. Some of those, I
15 think the largest bulk of those would be
16 considered to be self-insured, in which most of
17 the risk would have been borne by the employer,
18 in this case the city government.

19 When you say self-insured, though,
20 it's not a clean yes, they bear the risk versus
21 insured, no, they don't bear the risk. It's
22 typical that there's some risk-sharing between a
23 third-party administrator and the government in
24 this case.

1 So what all this means is that the
2 county government would be on the hook for and
3 pay part of healthcare costs on behalf of its
4 workers. I guess in that case reimbursement is
5 a little bit of a funny word, but they would be
6 paying healthcare costs on behalf of their
7 workers.

8 Q. Do you calculate as alleged damages in
9 this case any of those payments?

10 A. I believe that this is part of
11 compensation from the standpoint of the
12 counties, and the degree to which health
13 insurance costs were included in compensation
14 for the portion of workers that are not set
15 aside by the overhead adjustment, yes, I do.

16 Q. So where would we find that in your
17 work product?

18 A. It would be under compensation.
19 There's wages and salaries and there's other
20 categories, and in the other category.

21 Q. Okay. And is the same true for
22 Cuyahoga County or not?

23 A. The same would be true, yeah.

24 Q. So for both Summit County and Cuyahoga

1 County, to the extent that either of the
2 counties is making payments in connection with
3 prescription opioids written to county
4 employees, those expenses are included in your
5 calculations as non-overhead affected costs, and
6 they are included in your damages?

7 A. Yes, for employees that are in the
8 variable cost category, I examine their
9 compensation package, which is wages plus
10 benefits, and health insurance costs are
11 comprehensive and include prescriptions for the
12 workers.

13 Q. What about payments made by Summit
14 County or Cuyahoga County on behalf of injured
15 workers that are attributable to opioids?

16 A. You're asking about the health
17 insurance payments in this context?

18 Q. Well, I'm trying to be broad to make
19 sure I cover it. Yes.

20 A. I'm sorry, so ask me again, please?

21 Q. Well, I'm asking about health
22 insurance payments made by Summit County or
23 Cuyahoga County on behalf of injured workers
24 that are attributable to opioids, are those

1 included in your calculations?

2 A. I would have to check to see if the
3 workers' comp costs are included in the variable
4 category, and I don't remember. But it's in my
5 material. We could figure that out if we wanted
6 to. If it is, then I would again -- the
7 workers' comp costs include health insurance
8 costs, so they would be included.

9 Q. Sitting here today, do you think you
10 included it as an affected non-overhead cost or
11 not?

12 A. I don't remember.

13 Q. Well --

14 A. Sorry.

15 Q. You don't remember what you did, but
16 I'm asking you, sitting here today, as you
17 approach it, what do you think you should do?

18 MR. SOBOL: Objection.

19 He said he didn't remember.

20 MR. KEYES: I understand he doesn't
21 remember what he did.

22 BY MR. KEYES:

23 Q. I'm not asking about what you did.

24 I'm asking, sitting here today, what

1 do you think you should do? Should it be
2 included in your total damages, or excluded?

3 A. It probably depends on the context and
4 the division. If it's reasonable to believe
5 that some of the on-the-job injuries are part of
6 the normal course of work, then probably it
7 should be included. But truthfully, I would
8 have to go back and try to reconstruct what I
9 did in that case.

10 Q. Okay. But again, to be clear, I'm not
11 asking what you did before. I realize you don't
12 remember that.

13 Sitting here today, as you approach it
14 as a specific example of figuring out whether
15 something is an affected cost or not, whether
16 it's an overhead cost or not, how do you think
17 you treated these payments? How do you think
18 you should treat these payments?

19 A. Well, I should make a judgment about
20 whether they belong in one category or the
21 other. I'm not --

22 Q. So what judgment do you think you
23 should draw today?

24 A. Well, I said it would probably depend

1 on the division and whether I thought it was
 2 likely that the workers' comp costs were part of
 3 what workers might be exposed to in the normal
 4 course of their work.
 5 Q. That's the criteria you would use?
 6 A. That's the criteria I would use.
 7 Q. Who are the manufacturer defendants in
 8 this case?
 9 MR. SOBOL: Off the top of his head?
 10 A. Off the top of my head, I know Teva,
 11 Mallinckrodt, Purdue, Endo. I'm sure there are
 12 others. I don't want to make a slur on some
 13 manufacturer's name if I'm not sure.
 14 BY MR. KEYES:
 15 Q. Do you identify the manufacturer
 16 defendants --
 17 MR. SOBOL: Is this deposition
 18 transcript confidential?
 19 MR. KEYES: I have not designated it
 20 so, no.
 21 MR. SOBOL: Okay. So don't slur
 22 anybody then.
 23 THE WITNESS: That's what I thought I
 24 should do.

1 BY MR. KEYES:
 2 Q. Do you identify in your damages report
 3 who the manufacturer defendants are?
 4 A. I don't think I do.
 5 Q. Do you identify in your damages report
 6 who the distributor defendants are?
 7 A. I don't think I do that either.
 8 Q. Or any of the retail pharmacy
 9 defendants?
 10 A. Same answer.
 11 Q. Okay. Are any of your analyses set
 12 forth in your damages report defendant-specific?
 13 MR. SOBOL: Objection. Asked and
 14 answered.
 15 A. No, in the sense that the damages I
 16 estimate are in total those due to defendants'
 17 misconduct, defendants', plural, misconduct.
 18 BY MR. KEYES:
 19 Q. And what is the misconduct by the
 20 manufacturing defendants?
 21 A. The component of misconduct that
 22 Rosenthal studies in her report is misleading is
 23 advertising, but there's more to it than that.
 24 Q. Your understanding is that what

1 Professor Rosenthal is measuring as the
 2 manufacturers' misconduct is misleading
 3 advertising?
 4 A. Well, yes, that's what I understand to
 5 be the case.
 6 Q. What is your basis for that
 7 understanding?
 8 A. My familiarity with the Rosenthal
 9 report.
 10 Q. And what do you mean by "advertising"?
 11 A. What Rosenthal does is count detailing
 12 visits.
 13 Q. What is detailing?
 14 A. Detailing is a practice by which sales
 15 reps from drug manufacturers pay face-to-face
 16 visits to doctors' offices and help inform and
 17 persuade physicians to use their employer's
 18 product.
 19 Q. And what does Professor Rosenthal
 20 assume about that detailing or promotion?
 21 MR. SOBOL: Objection.
 22 A. Well, there's a set of things. Not
 23 sure what -- where you want me to go off and
 24 talk here.

1 BY MR. KEYES:
 2 Q. Well, does she identify a particular
 3 promotion by particular manufacturing defendants
 4 that she says was unlawful?
 5 A. She is able to identify particular
 6 defendants' detailing activities, which I
 7 understand she makes a determination, I believe,
 8 on the basis of counsel instructions of whether
 9 that is misconduct.
 10 Q. Does she identify a subset of the
 11 promotion by the manufacturing defendants that
 12 she assumes is or concludes is unlawful?
 13 MR. SOBOL: Objection.
 14 A. My understanding is that she -- in
 15 relating the total volume of detailing visits to
 16 shipments, on instruction from counsel,
 17 Professor Rosenthal attributes that portion of
 18 shipments to defendants' misconduct. That
 19 probably wasn't very clear.
 20 BY MR. KEYES:
 21 Q. I'd like to know your understanding.
 22 Does she say that all promotion by the
 23 manufacturing defendants was unlawful, most of
 24 it, some of it, a particular type of promotion

1 was unlawful? What is your understanding of
 2 what she assumes for purposes of her analyses?
 3 A. My understanding is what she assumes
 4 on the basis of what I believe to be instruction
 5 from counsel is that all her measured
 6 advertising activities are misconduct --
 7 represent misconduct.
 8 Q. All measured advertising activities?
 9 A. Detailing visits.
 10 Q. Right.
 11 So does she assume that for purposes
 12 of conducting her analysis all or virtually all
 13 promotion by the manufacturer defendants from
 14 1995 to the present was unlawful?
 15 MR. SOBOL: Objection.
 16 A. My understanding is that she was asked
 17 to assume that.
 18 BY MR. KEYES:
 19 Q. And because your opinions and your
 20 quantification of damages relies on Rosenthal's
 21 conclusions, your opinions also rely on that
 22 assumption, correct?
 23 MR. SOBOL: Objection.
 24 A. The particular damages numbers that I

1 present in my report depend on the results of
 2 both Professor Rosenthal and Cutler's work.
 3 BY MR. KEYES:
 4 Q. And, therefore, your particular
 5 damages numbers that you present in your report
 6 depend on the assumptions that Professor
 7 Rosenthal and Professor Cutler make in doing
 8 their work, correct?
 9 A. All the things that feed into their
 10 conclusions in some sense I depend on.
 11 Q. But I was asking specifically about
 12 assumptions.
 13 Your particular damages numbers that
 14 you present in your report depend on the
 15 assumptions that Professor Rosenthal and
 16 Professor Cutler make in doing their work,
 17 correct?
 18 MR. SOBOL: Objection.
 19 A. That's a little too broad to give a
 20 yes answer to, but a number of their assumptions
 21 that underlie their empirical work would
 22 influence their empirical estimates which would
 23 then feed into affecting my damages.
 24 BY MR. KEYES:

1 Q. What assumptions do Professor
 2 Rosenthal and Professor Cutler make in doing
 3 their work that do not impact your damages
 4 quantification?
 5 MR. SOBOL: Objection. Scope.
 6 He doesn't have the reports in front
 7 of him.
 8 A. I would have to -- I think it might
 9 help or it might not give me an answer to this.
 10 I was just kind of noting that your original
 11 question was too broad, that there's a number of
 12 assumptions that are made in the report that
 13 don't affect the empirical results, and I didn't
 14 want to say that every assumption that Meredith
 15 Rosenthal or Cutler makes would affect their
 16 results. That's all I'm saying.
 17 Q. Professor Rosenthal and
 18 Professor Cutler did make assumptions that do
 19 affect their empirical results, correct?
 20 A. I agree with that.
 21 Q. Those assumptions also have an impact
 22 on the damages quantification that you did,
 23 correct?
 24 A. That would be correct. So if there

1 were an assumption that affected their
 2 estimates, then it would feed through and affect
 3 my quantification.
 4 Q. So now can you identify for me
 5 assumptions that either Professor Rosenthal or
 6 Professor Cutler made that did not affect their
 7 empirical results?
 8 MR. SOBOL: Same objection as
 9 previously when the question was asked.
 10 A. There probably are some. I don't have
 11 any off the top of my head.
 12 BY MR. KEYES:
 13 Q. Can you identify a single one, a
 14 single assumption they made in their work that
 15 does not affect their empirical work?
 16 MR. SOBOL: Objection. Same objection
 17 as previously.
 18 A. That's not quite the same question,
 19 but nothing occurs to me.
 20 BY MR. KEYES:
 21 Q. Can you identify a single assumption
 22 that Professor Rosenthal or Professor Cutler
 23 made in their work that does not affect their
 24 empirical results?

1 MR. SOBOL: Objection. Same objection
 2 as before.
 3 A. Same answer.
 4 BY MR. KEYES:
 5 Q. Have you done any independent
 6 examination of the opioid manufacturer
 7 defendants' marketing?
 8 A. I'm familiar with material in this
 9 case that plays into my public nuisance report.
 10 Q. But I'm asking about whether you've
 11 done any examination, not just familiarity.
 12 Have you studied or examined the
 13 opioid manufacturer defendants' marketing?
 14 MR. SOBOL: Objection.
 15 A. I've examined. That seems to be -- to
 16 me to be studied.
 17 BY MR. KEYES:
 18 Q. And you did that in connection with
 19 your nuisance report?
 20 A. Yes.
 21 Q. Did you do any examination of the
 22 opioid manufacturer defendants' marketing in
 23 connection with your damages report?
 24 A. No, I don't think so.

1 Q. Did you do any examination of the
 2 opioid manufacturer defendants' promotion in
 3 connection with your damages report?
 4 A. No, I don't think so. That's a
 5 Rosenthal thing.
 6 Q. Did you do any examination of the
 7 opioid manufacturers' detailing in connection
 8 with your damages report?
 9 A. That's also the Rosenthal thing.
 10 Q. Is that a no?
 11 A. That's I didn't do it. Progress.
 12 Q. Do you believe that all of the
 13 promotion conducted by manufacturer defendants
 14 is false?
 15 MR. SOBOL: Objection.
 16 A. I didn't study it.
 17 BY MR. KEYES:
 18 Q. So do you have that belief or not?
 19 MR. SOBOL: Objection.
 20 A. I don't know.
 21 BY MR. KEYES:
 22 Q. Do you believe that all of the
 23 promotion conducted by the manufacturer
 24 defendants was unlawful?

1 MR. SOBOL: Objection.
 2 A. As we -- as you established a few
 3 moments ago, I didn't study it.
 4 BY MR. KEYES:
 5 Q. In connection with your work on your
 6 nuisance report, do you believe all of the
 7 promotion conducted by manufacturer defendants
 8 was false?
 9 MR. SOBOL: Objection.
 10 A. I don't need that belief in the sense
 11 of to be -- it wasn't necessary for me to come
 12 to a judgment that 100 percent of the
 13 advertising was false.
 14 BY MR. KEYES:
 15 Q. In connection with your work on your
 16 nuisance report, do you believe that all of the
 17 promotion conducted by manufacturer defendants
 18 was unlawful?
 19 MR. SOBOL: Objection. Asked and
 20 answered.
 21 A. I didn't need to come to a
 22 determination of that. It wasn't part of my
 23 assignment, for one thing.
 24 BY MR. KEYES:

1 Q. For purposes of your damages report,
 2 have you analyzed how your calculations would
 3 change if, in fact, the defendant manufacturers
 4 had marketed their products in a lawful way?
 5 MR. SOBOL: Objection.
 6 A. This is something that would be -- let
 7 me take an example, I think, of what you're
 8 asking about.
 9 Suppose one manufacturer were
 10 determined to be completely lawful, and those
 11 detailing visits were then not deemed to be
 12 inappropriate, that's something that Professor
 13 Rosenthal could readily calculate, and then the
 14 proportionality of that affect would flow
 15 through Cutler and would flow through to my
 16 damages report. So it's something that the
 17 methodology is capable of doing.
 18 BY MR. KEYES:
 19 Q. Has Professor Rosenthal done that?
 20 A. She's done some analysis of the affect
 21 on share of shipments attributable to misconduct
 22 under assumptions of different compositions in
 23 the defendant pool, so yes, I think she has.
 24 Q. You said that's something she could

1 do. So has she performed calculations on the
 2 assumption that one manufacturer's conduct was
 3 completely lawful and the detailing visits were
 4 not deemed to be inappropriate?
 5 A. I believe she has, yes.
 6 Q. Okay. For which manufacturer?
 7 A. She did it for a series of them.
 8 Q. Okay. And have you seen that in her
 9 report?
 10 A. I have.
 11 Q. Your work in your report relies on the
 12 work of Professor Rosenthal and Professor
 13 Cutler, correct?
 14 A. That's correct.
 15 MR. SOBOL: Object.
 16 BY MR. KEYES:
 17 Q. So before --
 18 MR. SOBOL: I'm getting a little slow
 19 here, but objection, asked and answered.
 20 Go ahead.
 21 BY MR. KEYES:
 22 Q. So before you issued your damages
 23 report on March 25th, how did you know what
 24 Professor Cutler's work was, and how did you

1 know what Professor Rosenthal's work was?
 2 A. Well, we all needed one another.
 3 David needed to know -- David Cutler needed to
 4 know which divisions were likely to be affected
 5 by opioids, so I had to tell him that. I had to
 6 tell him that ahead of March 25. And then so I
 7 could do my work, he needed to tell me what the
 8 content of essentially the Excel spreadsheets
 9 where there's a share of harms associated with
 10 misconduct, what those numbers would look like.
 11 And then we could do the rest of our reports
 12 sort of on our own.
 13 Q. So how did you communicate to
 14 Professor Cutler which divisions were affected?
 15 A. I let counsel know what I'm going to
 16 be saying about that, and then they told David.
 17 Q. Did you share a draft of your
 18 conclusions and your discussion about which
 19 divisions were affected with Professor Cutler?
 20 MR. SOBOL: I thought that drafts were
 21 off limits in this case.
 22 MR. HALLER: Not if Cutler is relying
 23 on it.
 24 MR. SOBOL: But Cutler identifies what

1 he relies upon in his report, and there's no
 2 draft he identifies as relying on in his report.
 3 MR. KEYES: I'm asking the question
 4 what was shared. I'm not even asking for a copy
 5 of it at this point.
 6 MR. SOBOL: I'm going to instruct him
 7 not to answer until I know better, and we'll
 8 reserve until the next time.
 9 BY MR. KEYES:
 10 Q. Well, to be clear, did you share a
 11 draft of your conclusions and your discussion
 12 about which divisions were affected with
 13 Professor Cutler?
 14 MR. SOBOL: Yes, I'm instructing him
 15 not to answer until I have a better clarity
 16 where this line gets drawn.
 17 BY MR. KEYES:
 18 Q. Well, you said Professor Cutler relied
 19 on your determination of which divisions were
 20 affected, to use your terminology, right?
 21 A. I said something like that, yes.
 22 Q. Okay. So if Professor Cutler is
 23 relying on your determination of which divisions
 24 are affected, I need to know how he learned what

1 divisions were affected. He learned it from
 2 you?
 3 A. That's correct.
 4 Q. So did you send him a draft report or
 5 a draft discussion that identified which
 6 divisions were affected?
 7 MR. SOBOL: Same instruction.
 8 MR. KEYES: Even though he's just said
 9 that Professor Cutler relied on it?
 10 MR. SOBOL: He doesn't know what
 11 Professor Cutler relied on or not. Professor
 12 Cutler knows what he relied upon. And I've read
 13 Professor Cutler's report, and Professor
 14 Cutler's report has materials that he
 15 considered, and there's no draft of McGuire
 16 report in there.
 17 MR. KEYES: Well, with respect, you're
 18 not the witness, you're not the expert, and what
 19 you believe is irrelevant, given that Professor
 20 McGuire, who is the expert and is the witness,
 21 just said that he understands that Professor
 22 Cutler relied on his determination of which
 23 divisions were affected.
 24 BY MR. KEYES:

1 Q. So given your testimony, Professor
2 McGuire, that you did something that Professor
3 Cutler relied on, I'd like to know, did you send
4 him a draft or some discussion relating to which
5 divisions were affected to Professor Cutler so
6 that he could do the work he said depended on
7 it?

8 MR. SOBOL: To the extent the question
9 asks about whether you sent him a draft, I
10 instruct you not to answer. To the extent that
11 it asks differently as to whether or not you had
12 a discussion with him, you may answer yes or no.
13 BY MR. KEYES:

14 Q. How did you communicate to
15 Professor Cutler your analysis and your findings
16 about which divisions were affected?

17 MR. SOBOL: I instruct you not to
18 answer if it's by way of a draft.

19 A. It was a very simple list of nine and
20 ten divisions in two different counties. It
21 didn't require a lot of prose backup. Here they
22 are.
23 BY MR. KEYES:

24 Q. So how was that communicated to

1 Professor Cutler?

2 A. I would have given him that list.

3 Q. How?

4 A. I don't remember.

5 Q. Now, you said that Professor Cutler's
6 percentages were something you needed to rely on
7 for your work?

8 A. Yes.

9 Q. Did you look at drafts of
10 Professor Cutler's report?

11 MR. SOBOL: Again, I instruct him not
12 to answer.

13 MR. RICE: Counsel, can I have your
14 basis for the objection, please?

15 MR. SOBOL: It's not clear to me
16 whether, under the existing rules for these
17 depositions, whether it is fair game for people
18 to be talking about drafts of various expert
19 reports.

20 MR. RICE: So is it attorney/client
21 privilege-based concern?

22 MR. SOBOL: No. It's whether or not
23 the orders that apply to this case and drafts of
24 expert reports are to be discussed by the

1 experts. I think this comes very close to the
2 line. Since Professor McGuire will be back next
3 week, I've indicated that I'm instructing him
4 now not to answer until I have better direction
5 from others.

6 MR. KEYES: Seems like your concern is
7 whether the draft report is discoverable. I'm
8 not asking for a copy of the draft report at
9 this time. I just want to know whether
10 Professor McGuire received it and saw it.

11 MR. SOBOL: That's not my concern. I
12 mean, I've stated my concern. I don't know
13 whether or not discussions about drafts, not the
14 drafts themselves, but whether discussions of
15 drafts are discoverable or not.

16 MR. KEYES: I haven't asked about
17 discussions about drafts. You're jumping the
18 gun. I'm asking, did he get a draft of
19 Professor Cutler's report that provided the
20 percentages upon which Professor McGuire has
21 expressly said he relied.

22 MR. SOBOL: Okay. Well, like I said,
23 the instructions there, I'm not worried at all
24 about the instruction. If you guys want to

1 bicker about it, fine, but you're running out of
2 time for the day.

3 BY MR. KEYES:

4 Q. How do you know what Professor
5 Cutler's percentages are?

6 MR. SOBOL: Other than drafts, you may
7 answer.

8 A. It takes the form of Excel tables that
9 are reproduced in my report. And it's also not
10 a prose issue, it's here is the Excel
11 spreadsheet, here are the percentages, then I'm
12 off and running.

13 BY MR. KEYES:

14 Q. And when did you get those
15 percentages, the Excel spreadsheet that lists
16 the percentages?

17 A. Not the night before, not too much
18 earlier than the deadline date, so it would have
19 been a few days ahead, something like that.

20 Q. And upon receipt of those percentages
21 from Professor Cutler, who inputted them into
22 your spreadsheets for purposes of running your
23 calculations?

24 A. Compass Lex would have done that.

1 Q. And what steps did you take to
2 double-check that the percentages were entered
3 correctly and that the math was correct in your
4 own calculations?
5 A. Well, I spot-check these things.
6 Q. What do you mean you spot-check them?
7 A. Just look at some of the products,
8 does it look right, and then --
9 Q. What do you mean does it look right?
10 What benchmarks, criteria, standards are you
11 using to determine whether it looks right?
12 A. You're multiplying two numbers in each
13 year for each division, it's not a complicated
14 mathematical operation. The numbers are pretty
15 small in most cases, by which I mean that the
16 percent of harms attributable to misconduct are
17 pretty small numbers, sometimes they're around
18 1, 2, 3, 4, 5 percent. So what I do is look at
19 the damages result to see if it seems to be 1,
20 2, 3, 4, 5 percent of the potentially affected
21 costs.
22 Q. Would you turn to Appendix IV.C-1.1 in
23 your report?
24 MR. KO: Sorry, Andrew, which --

1 MR. KEYES: Appendix IV.C-1.1.
2 MR. KO: Thanks.
3 BY MR. KEYES:
4 Q. Are you there?
5 A. Yes.
6 Q. Okay. This is a spreadsheet showing
7 damages that you calculated for the Cuyahoga
8 ADAMHS Board, correct?
9 A. That's correct.
10 Q. And I just want to confirm line 2 is
11 titled "Opioid-Related Percentage of Services"?
12 A. Right.
13 Q. Do you see that?
14 A. I do, yes.
15 Q. And did you get those percentages from
16 Professor Cutler?
17 A. No, those are budget information that
18 I put together.
19 Q. Okay. Can you look at the sources and
20 notes for number 2?
21 A. Yeah, that's a metric analysis in the
22 Cutler report, but it applies the metric
23 analysis to the numbers in the budget. This
24 isn't -- these numbers don't depend on Cutler's

1 empirical results about the effective shipments
2 or Meredith's results, this particular line.
3 Q. Okay. Now turning to line 5, there's
4 a series of percentages.
5 Do you see that?
6 A. I see it, yes.
7 Q. Did you get those from
8 Professor Cutler?
9 A. Yes.
10 Q. Do you see that line 7, the
11 percentages?
12 A. I do.
13 Q. Did you get those from
14 Professor Cutler?
15 A. Those are Cutler.
16 Q. Line 9, do you see those percentages?
17 A. I do.
18 Q. Those are percentages from Professor
19 Cutler?
20 A. Those are also Cutler.
21 Q. Line 11, there are percentages there,
22 you got those percentages from Professor Cutler?
23 A. Yes.
24 Q. Line 13, do you see those percentages?

1 A. I do.
2 Q. You got those percentages from
3 Professor Cutler?
4 A. Also, yes, from Professor Cutler.
5 Q. Line 15, do you see those percentages?
6 A. I do.
7 Q. Did you get those from Professor
8 Cutler?
9 A. Yes.
10 Q. Line 17, do you see those percentages?
11 A. Also from Professor Cutler.
12 Q. Line 19?
13 A. Same answer.
14 Q. Okay. So on this chart, all of the
15 percentages that are listed in lines 5, 7, 9,
16 11, 13, 15, 17, and 19 are percentages that you
17 received from Professor Cutler?
18 A. That's right.
19 Q. And for any of those percentages, did
20 you tinker with them, modify them, change them
21 before you inputted them into your calculations?
22 A. No.
23 Q. You accepted them as accurate by
24 relying on Professor Cutler's work?

1 A. Yes.

2 Q. And if I went through the same

3 exercise for each chart for each affected

4 division for Cuyahoga County and each chart for

5 each affected division of Summit County, would

6 you give me the same answers?

7 MR. SOBOL: Well, objection.

8 BY MR. KEYES:

9 Q. That is, the opioid-related percentage

10 of services is something you prepared based on

11 Professor Cutler's metric analysis, correct?

12 A. It would differ division by division,

13 but at some point when we start talking about

14 the rows following something like approach one,

15 that's where the Cutler percentages start coming

16 in.

17 Q. And again, all of those percentages

18 come from Professor Cutler. You accepted them

19 without modifying, tinkering them, you accepted

20 them as-is based on Professor Cutler's work?

21 A. Yes.

22 MR. SOBOL: How are we doing with

23 time?

24 MR. KEYES: I have a note we have five

1 minutes remaining. And unless there are any

2 objections, I'm happy to call it quits today.

3 MR. SOBOL: Just tack it onto the next

4 time.

5 MR. KEYES: Sure.

6 THE VIDEOGRAPHER: The time is

7 6:09 p.m.

8 MR. KEYES: Does anyone else have

9 questions they want to use for the five minutes?

10 No? Okay.

11 THE VIDEOGRAPHER: The time is

12 6:09 p.m. This day of deposition has concluded,

13 and we are off the record.

14 (Whereupon, the deposition was

15 adjourned.)

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, MAUREEN O'CONNOR POLLARD, RMR, CLR,

4 and Notary Public in and for the Commonwealth of

5 Massachusetts, do certify that on the 23rd day

6 of April, 2019, at 9:02 o'clock, the person

7 above-named was duly sworn to testify to the

8 truth of their knowledge, and examined, and such

9 examination reduced to typewriting under my

10 direction, and is a true record of the testimony

11 given by the witness. I further certify that I

12 am neither attorney, related or employed by any

13 of the parties to this action, and that I am not

14 a relative or employee of any attorney employed

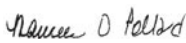
15 by the parties hereto, or financially interested

16 in the action.

17 In witness whereof, I have hereunto

18 set my hand this 25th day of April, 2019.

19

20 

21 MAUREEN O'CONNOR POLLARD, NOTARY PUBLIC

22 Realtime Systems Administrator

23 CSR #149108

24

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over

4 carefully and make any necessary corrections.

5 You should state the reason in the appropriate

6 space on the errata sheet for any corrections

7 that are made.

8 After doing so, please sign the

9 errata sheet and date it. It will be attached

10 to your deposition.

11 It is imperative that you return

12 the original errata sheet to the deposing

13 attorney within thirty (30) days of receipt of

14 the deposition transcript by you. If you fail

15 to do so, the deposition transcript may be

16 deemed to be accurate and may be used in court.

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4	I, _____, do
5	Hereby certify that I have read the foregoing
6	pages, and that the same is a correct
7	transcription of the answers given by me to the
8	questions therein propounded, except for the
9	corrections or changes in form or substance, if
10	any, noted in the attached Errata Sheet.
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16	Subscribed and sworn
17	To before me this
18	_____ day of _____, 20____.
19	My commission expires: _____
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